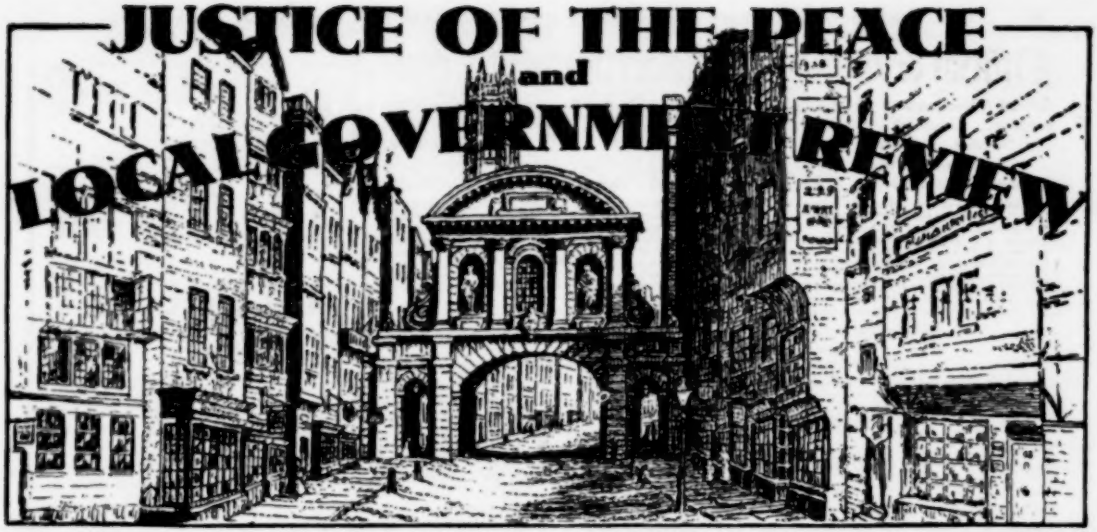

VOL. CXV. LONDON: SATURDAY, OCTOBER 27, 1951. No. 43

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LECTURES

GRESHAM COLLEGE, Basinghall Street, London, E.C.2. Four lectures on "INFANTS and CHILDREN" by Richard O'Sullivan, Esq., K.C., Monday to Thursday, October 29 to November 1. The Lectures are FREE and begin at 5.30 *p.m.*

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Canvassing will disqualify, and the applicant must disclose in his application whether he is related to any member or senior officer of the Council.

H. WELLS,
Clerk of the Council.

Council Offices,
Harrow Weald Lodge, Harrow.

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Council Offices,
Bexleyheath,
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Clerk of the Peace and of the County Council.

The Courts,
Carlisle, Cumberland.

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WM. J. C. PERKINS,
Clerk to the Combined Probation Committee.

Borough Justices' Clerk's Office,
Town Hall,
Burnley,
Lancs.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

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NOTES of the WEEK

The Magistrates' Association

On June 30 last the total membership of the Magistrates' Association was 8,861. This was a net increase on the previous year's figures of 1,033. This shows the Association to be in a healthy, growing condition, but it aims at much more. The latest annual report says: "There must always, however, be a feeling of regret so long as we fail to represent the majority of active magistrates and we shall not be satisfied until at least seventy-five *per cent.* of those newly-appointed to the Commission recognize that support of the only organization able to represent their interests as well as to help them in their work, is well worth the small outlay of £1 a year."

In view of the fact that the magistrates' courts committees are to be set up on the coming into force of certain provisions of the Justices of the Peace Act, 1949, on April 1 next, the council has established a new committee whose terms of reference are to study the implications of the statutory duties placed upon magistrates' courts committees under the Justices of the Peace Act, 1949, and to recommend to the council the best policy for enabling the Association to advise and guide the benches throughout the country on such matters.

The report shows that the Association, through its council and various committees has done a great deal of useful work. Various recommendations for the amendment of the law have been submitted, visits of observation have been carried out and many conferences have been organized.

Appended to the report is the memorandum of evidence submitted to the Departmental Committee on Maladjusted Children. Another appendix is the report on training in girls' borstal institutions. The special sub-committee expresses itself as very much impressed with the devotion of the staff to their work and responsibilities. They found the general scheme of training well organized and the food and clothing particularly good. Comment is made, however, on the lack of variety in training, solitary confinement in punishment rooms and the need for better after-care in the period immediately after release.

Prison Sentences

In his address to the Magistrates' Association at its annual meeting, Sir Harold Scott dealt with the subject of "Punishment or Reform." Sir Harold is Commissioner of Police of the Metropolis and a former chairman of the Prison Commission. He has therefore considerable knowledge of offenders gained from two different points of view, and it is encouraging to find that he appears to think that present methods of dealing with offenders are generally on the right lines. He recognized that some of the earlier hopes of reformers had been dashed and that experience showed the need for a sterner and more realistic approach to certain types of offenders. Having referred to the progressive legislation of the last half century and the latest major statute, the Criminal Justice Act, 1948, he said he thought we might now claim to be on the right road.

Dealing with the general question of prison sentences, he stated that the percentage of adult prisoners who were not received again into prison had varied in recent years from seventy-six to eighty-one. It was therefore no longer true to say: "They always come back."

There is general agreement that young offenders should be kept out of prison if possible, and several sections of the Criminal Justice Act, 1948, show that this is the policy of the legislature. It may well be that some of the young prisoners might have been given a chance on probation and that others should have been sent to borstal training. If prison is the only course open to the court, then evidently there must be something serious about the case, and it is not unreasonable to suggest that the period should be long enough to give the authorities an opportunity of bringing some lasting influence to bear on the offender rather than such a short sentence as may do more harm than good.

It is satisfactory to learn that comparatively few adults sent to prison return there. This does not mean that more people should be sent to prison because of its salutary effect, but it may mean as we hope it does, that the courts are showing discrimination in deciding when to pass a prison sentence, and that the old evils of prison life, which added much to recidivism, are gradually being replaced by constructive methods of treatment.

The Press and the Courts

In this country we attach considerable importance to the freedom of the press, and prefer to leave questions of publication of reports from the courts to the judgment and good taste of editors rather than indulge in numerous statutory restrictions and prohibitions. There are the well known restrictions in connexion with cases in which juveniles are concerned, contained in ss. 39 and 49 of the Children and Young Persons Act, 1933, and other restrictions in s. 3 of the Summary Procedure (Domestic Proceedings) Act, 1937, and s. 1 of the Judicial Proceedings (Regulation of Reports) Act, 1926. In the main, however, courts have no power to make orders prohibiting the publication of names, addresses or other particulars.

Our New Zealand contemporary *The Honorary Magistrate* was recently asked what powers justices had to ask the press to refrain from publishing the names of offenders before the court, or to prohibit such publications.

The reply will be of particular interest to probation officers and others concerned with the probation system, here it is: "The power of courts to order the suppression of names is contained

in s. 9 of the Offenders Probation Act, subs. 1 of which reads as follows: 'If any person accused of an offence within the meaning of this Act has not previously been convicted of any offence, the court may prohibit the publication of his name in any report or account of his arrest, trial, or conviction, or of his release from probation.'

"It will be noted that there are two essential elements before an order can be made. One, the offence must be one within the meaning of the Act. Under the Act 'offence' means any offence punishable by imprisonment whether on indictment or not. Two, the offender must not have been previously convicted of any offence. Before the court can make any order it must satisfy itself on those two points.

"Unless therefore the punishment that may be awarded for the offence may be imprisonment there seems to be no power to order suppression of the name. Similarly where the accused has been previously convicted of an offence punishable by imprisonment (even although an alternative fine as allowed in the section creating the offence, may have been imposed).

"There is of course nothing in the law preventing the courts suggesting to the press that the name should not be published even though the court has no power to make an order. Whether the press complies with the suggestion is then left to the good sense and courtesy of the editor concerned, who will no doubt take the same factors into consideration as the court did in making the suggestion. But if the name is published following such suggestion no one has any legal remedy. But if it is published following a prohibition then, of course, the paper and its editor are guilty of contempt of court.

"Under s. 42 of the Transport Act the provisions of s. 9 of the Offenders Probation Act are directed not to be applied to convictions under ss. 39 and 40 of that Act. That is, the offences of intoxication while in charge of a car, or while negligently driving, etc.".

How Not to Pay a Fine

Most people who steal do so from fairly obvious motives, though there are rare cases of genuine kleptomania, and a few arising from unusual reasons. We have all read of highwaymen and bushrangers who are supposed never to have robbed the poor and often to have robbed the rich to benefit the poor, while there is also the much quoted story, told we believe, by the Reverend Sydney Smith, of the man who was so moved by a charity sermon that he picked his neighbour's pocket to put a guinea in the plate.

A novel excuse for a crime of breaking and entering was put forward at a recent quarter sessions by a man who was said to have been found by a policeman apparently doing up his shoes beside a broken shop window, the contents of which had been disturbed. The man said he needed money to pay an outstanding fine by a certain date. As he had been given time to pay, it might have occurred to him that he could apply for an extension, and in any event he would, by committing a serious offence, render himself liable to a much longer term of imprisonment than that which he might have to undergo in default of payment of a fine. Evidently he calculated, if he thought at all about possible consequences, that the risk of detection and conviction was insignificant, but the event proved him wrong. As, however, he was placed on probation, he may still think that he has not been so unlucky after all.

Guardianship of Infants

The question of the exercise of the jurisdiction of justices to make orders as to the custody of children in cases where proceedings between the parties have taken place in the High Court, is often a matter of perplexity to justices and their clerks. We have always felt that justices should hesitate to act unless it is clear that there would be no want of respect to the High Court in their doing so, and that any guidance that might come from the High Court would be of the utmost value.

We are happy to be able to reproduce, by permission of the President, a circular, dated January 23, 1951, issued by the Senior Registrar of the Divorce Registry:

"At a meeting of Judges convened by the President to consider this matter, the following conclusion was reached:

"It is considered that while it is right and proper when the issue of custody is actually pending in a divorce suit that the justices should adjourn the guardianship summons on the lines laid down in *Higgs* v. *Higgs* and *Knott* v. *Knott*, there is no ground restricting the concurrent jurisdiction of the magistrates' courts in a guardianship case when the issue of custody has not been raised in the divorce suit merely because it is open to a spouse to take appropriate steps to enable him or her to raise the question of custody in the divorce suit. It is felt that the provision in s. 7 (3) of the Guardianship of Infants Act, 1925, affords a sufficient safeguard to any spouse who desires, however belatedly, to have issue of custody decided in the High Court."

Maintenance Orders (Facilities for Enforcement) Act, 1920

A correspondent writes that having recently had occasion to forward to the Secretary of State a certified copy of a maintenance order for transmission to another part of His Majesty's Dominions under the Maintenance Orders (Facilities for Enforcement) Act, 1920, his attention was drawn to the Home Office circular letter of June 15, 1925, some of the provisions of which he had overlooked. Section 2 of the Maintenance Orders (Facilities for Enforcement) Act simply requires that a certified copy of the order be sent to the Secretary of State: the above mentioned circular letter further requires that there should be: (*a*) a sworn statement of any arrears due. This should take the form of a complaint made on oath, and it is suggested that the form of complaint prescribed for use under the Bastardy Acts may conveniently be followed; (*b*) information sufficient for ascertaining the whereabouts of the defendant and for his identification, including his last known address, a personal description, and a photograph; (*c*) a certificate of the birth of any child for whose maintenance provision is made in the order and an express statement made by the complainant that the child is still alive.

Pushing Responsibility Upward

Holding an employer liable in criminal proceedings for something he has not personally done, and can sometimes show that he has tried to prevent, is not only a common cause of a sense of grievance, but also natural cause for outsiders to express sympathy. Yet provisions producing this superficially unjust result are unavoidable, if many familiar evils are to be stopped by legal proceedings. We have already spoken, *e.g.*, at 111 J.P.N. 296 and 112 J.P.N. 478, of a new form of enactment, established in several modern statutes, such as s. 14 of the Atomic Energy Act, 1946, and sch. 5 to the Exchange Control Act, 1947, making a company director liable in criminal proceedings for things he has not authorized and may not have heard of: these enactments, with their accompanying provisions removing all limit on the fines which may be imposed where a corporate body is convicted on indictment, are, so to speak, the apex of the pyramid, the base of which is formed by the cases in which the licensees of public houses are subject to prosecution for things done in their bars behind their backs. There are instances also in the Factory Acts, and their subordinate provisions, where the occupier of a factory is responsible, and that in penalties, for

omissions of which he knew nothing, or which he may have attempted to put right. The principle of all legal provisions in this sense is the same : that persons in a responsible position are made insurers, as it were, and held liable accordingly. One case recently brought to our notice is a good illustration. Defendants were a firm of coal merchants, whose standing in their own neighbourhood was based on a good reputation, so that deliberate sharp practice would have been bad business. Pleading guilty to delivering a load of coke in bags, which was appreciably below its alleged weight, the firm's representative stated that, after a previous conviction, they had posted notices at their coal yard informing drivers and drivers' mates that the firm held them responsible for weighing up the bags. It was, said counsel, impossible in practice to maintain constant supervision of the weighing and loading. By imposing on the company a substantial fine, with costs and advocate's fee, the magistrates (a country bench) showed, we think, a proper appreciation of the fact that legislation dealing with coal, bread, and many other things which have to be weighed, would easily be defeated if the principal could lay his responsibility on a subordinate. We call attention to the matter, which in itself is commonplace, because there is a great deal of short weight in certain trades, and magistrates are at times rather easily convinced that an employing firm, especially a company with branches, is deserving of sympathy rather than of punishment when its employees perpetrate frauds upon the customer. Often, we should agree, the employer, the managing director, or other controlling personage is not personally blameworthy, and, where he has tried to prevent abuses, he deserves sympathy, when abuses are discovered. For all that, punishing the firm, as in 113 J.P.N. 612, and it may be even punishing its high " executives," in the manner indicated in the earlier references, *supra*, to our columns, will have a salutary tendency to prevent their becoming weary in well doing.

Insurance Commissions

The *News Sheet* for June of the Bribery and Secret Commissions Prevention League reproduces an article by the League's secretary, which appeared first in the *Insurance Brokers Monthly*. Under the heading of " Insurance Commissions and Bribery " the article deals with the different cases of the insurance broker, the solicitor, the estate agent and some others who obtain commission when policies are taken out, and examines whether an element of corruption or secret commissions can creep in. As regards solicitors, the conclusion reached is that the receipt from the insurance company of a commission should always be disclosed to the client : some solicitors deduct such a commission from the total of their own fees, but the merit of doing so or not doing so does not raise the same question as is raised by failure to disclose the fact. If the solicitor who has, for instance, insured on his client's behalf a newly bought house informs the client specifically that the insurance company have paid him a commission, there is no element of secrecy about the matter ; and no impropriety. The client can if he chooses inquire into the question, whether the company with which the insurance has been effected is as good from his point of view as its rivals. As regards some other agents, there may be a question whom the person effecting the insurance is really representing, and where a professional insurance broker is concerned the position is in some respects anomalous. From the point of view of local authorities, the main interest of this topic lies in the receiving by their officials of commissions where policies are taken out on behalf of the authority. This has been a common practice, and may still be, for all we know ; from time to time it has produced unpleasant problems. Sometimes the local authority or its responsible committee has known that the official whose duty it was to effect the insurance was a standing agent of some insurance company, even if he was not getting a commission. Once more, the desirability or undesirability of his receiving it is a different matter from the secrecy of the commission. So long as his receiving the commission is disclosed, he is not bringing himself within the danger of legal proceedings. The only safe rule, probably, is for local authorities to lay it down that their officials may not receive commissions from insurance companies (or anybody else) in respect of policies effected (or other work done) on the local authority's behalf. The practice of receiving commission on insurance has become so inveterate that, where it still continues, the enforcement of such a rule would give rise to heartburning among the officials concerned, but the adoption and strict enforcement of such a rule is probably the only way of stamping out undesirable practices under this heading.

The Delayed Valuation for Rates

Several daily newspapers were behind the fair with an announcement towards the end of September that the revaluation of rateable property, contemplated by the Local Government Act, 1948, was not to be completed by 1953, as had been originally planned. The announcement was made in the House of Commons on August 2 (*Hansard*, col. 377) in the following question and answer :

Valuation Lists.

Mr. D. Jones asked the Minister of Local Government and Planning what information he has as to whether the new lists will be ready by the due date.

Mr. Lindgren : The Board of Inland Revenue have informed my right hon. friend that they have been unable to secure the requisite qualified staff and that they regret that they cannot complete all the revaluations in time. For the present he has agreed that they should concentrate on properties other than houses.

This will have been no surprise to local authorities, but we do not read the parliamentary reply, or understand the facts, as amounting to " collapse " of the proposal, or " abandonment " of revaluation, as some of the more sensational newspapers proclaimed. Whatever is likely to be the effect of the complex enactments in Part IV of the Act of 1948 (and this is largely conjectural) there seems a fairly general impression that dwelling houses will, as regards rateable value, be less affected than other properties by the change in the value of money, and that Part IV may result in not much more than legalizing a standstill, *i.e.*, cutting away the previous obligation to base rateable value on the letting value in a hypothetical free market, which produced such a recoil when the late Central Valuation Committee attempted to enjoin it. On this view, a diversion of effort within Somerset House, from Part IV of the Act of 1948 to properties not affected by that part, may make little difference in the long run. Certainly we see no reason to read into it, as was done not merely by irresponsible journals but by so sedate a publication as the *Financial Times*, a plot against commercial ratepayers. After all, piecemeal revaluation, however objectionable in theory, has always taken place in practice, for the simple reason that overseers in old days, rating authorities, and valuation committees, could not be everywhere in their parishes or other areas, or do everything at once. As our readers may remember, we thought some years ago that valuation could be kept in the local government framework (though not without substantial changes) if local authorities would face the need for changes. Agreement about these could not be secured, and valuation for rating ceased to be a local government function, but we never regarded this as a real loss to local government : on the contrary, we think it should prove a source of greater strength. It is regrettable

that Part IV of the Act of 1948 has proved a harder egg to incubate than was thought by those who laid it, but, if there has to be delay in getting a comprehensive valuation of all property throughout the country, we think dwelling-houses are the properties which can be left behind with least general inconvenience.

BAIL ON APPEAL TO QUARTER SESSIONS

Has a court of summary jurisdiction power to grant bail to a person committed to quarter sessions under s. 29 of the Criminal Justice Act, 1948, who lodges notice of appeal against his conviction? At first it appears that the case of *In re Whitehouse* [1951] 1 All E.R. 353, conclusively answers this question in the negative since the decision in this case is summarized in the headnote in the Law Reports as follows: "Notwithstanding s. 29, subs. (1), of the Criminal Justice Act, 1948, whereby justices, when sending a person convicted before them of an indictable offence to quarter sessions for sentence, must commit him in custody, and therefore have no power to admit him to bail, if such a person has appealed against his conviction, then the High Court, by virtue of s. 37, subs. (1), has power to admit him to bail pending the hearing of his appeal." However a careful examination of that case suggests that perhaps the headnote goes a little further than the actual decision of the case warranted, and that the question posed at the beginning of this article is still open to discussion.

It will be recalled that in the case of *Whitehouse* the defendant was convicted by a court of summary jurisdiction of receiving stolen property knowing it to have been stolen, and the court, on hearing his record and antecedents, decided to commit him for sentence to quarter sessions. The defendant lodged notice of appeal against his conviction, and also applied to the High Court for bail. It does not appear from the report whether or not the defendant had first applied to the summary court for bail, but from the subsequent conduct of the case it appears that this is most unlikely. It is important, for the purposes of this discussion, to note that at the hearing before the Divisional Court counsel for the applicant submitted that the justices, in view of the terms of s. 29 (1) of the Criminal Justice Act, could not entertain an application for bail, but that s. 37 of that Act enlarged the powers of the High Court, and enabled that court to grant bail in such circumstances. Hence the question of the power of the summary court to grant bail was never argued before the Divisional Court. In the course of delivering the judgment of the court, Lord Goddard, C.J., twice referred to the powers of the summary courts to grant bail. On the first occasion he said: "It is abundantly clear, therefore, that, where justices think fit to exercise their powers under s. 29, they have no power to grant bail." However, if this sentence is read in its context it seems fairly clear that in this instance Lord Goddard was considering the normal procedure to be followed when justices commit a defendant under s. 29, and his remarks did not have reference to the position which arises where a notice of appeal has been lodged. Subsequently, after referring to the powers given to a summary court to grant bail under s. 31 of the Summary Jurisdiction Act, 1879, Lord Goddard said: "There is no doubt that if justices refuse to admit a man to bail he can always appeal to this court. Therefore it looks as if the one case in which it has been necessary expressly to confer power on the High Court to release from custody a person who has given notice of appeal against a conviction is the case where he has been committed for sentence under s. 29 of the Act of 1948, *in which case the justices have no power to grant bail.* But, on the words of s. 37, subs. (1), it appears to me that the High Court has power to entertain an application for bail by a person sent forward for sentence, but who has appealed to quarter sessions against his conviction." (our italics). Perhaps two remarks may be made with reference to the italicised passage, firstly, as has already been pointed out, the attention of the court had not been directed to the arguments in favour of the proposition that the summary court had power to bail, and secondly, it is submitted with respect, that it is doubtful whether s. 37 (1) was in fact expressly designed to cover cases committed for sentence under s. 29. At the time this section was drafted it had been decided in *Ex parte Blythe* [1944] 1 All E.R. 587 and *In re Lyttleton* (1945) W.N. 24, that the High Court had no jurisdiction to grant bail on appeal to quarter sessions from a summary court; further, in *Ex parte Speculand* [1946] 1 K.B. 48, Lynskey, J., held that when justices had fixed the amount of bail pending appeal the High Court could not reduce the amount. Accordingly, is it not likely that s. 37 (1) was introduced, not because it was believed that the summary courts had no power to grant bail, but because it was thought desirable that the exercise of their discretion should be subject to review by the High Court?

It must be emphasized again that the only question in the case of *Whitehouse* was whether or not the High Court had power to grant bail, and the question of the powers of the summary courts was touched upon only indirectly. Turning then to these powers, it is clear that where a summary court commits a defendant under s. 29 for sentence, the defendant has to be committed in custody. If any further authority, other than the clear words of the statute are needed for this proposition, this will be found in *R.* v. *South Greenhoe JJ., Ex parte the Director of Public Prosecutions* (1950) 114 J.P. 312. Where however a defendant, who pleaded not guilty, gives notice of his appeal against the conviction on which the order of the court under s. 29 is founded, may it not be that an entirely new position is disclosed? Since the decision in *R.* v. *Sheridan* (1936) 100 J.P. 319 it is abundantly clear that "conviction" and "sentence" are two different matters. Section 36 (1) (*b*) of the Criminal Justice Act, 1948, empowers a defendant who pleaded not guilty to appeal against the conviction *or* sentence. Generally the appeal is in fact against both conviction and sentence, but it is widely held that where, for example, a defendant who had pleaded not guilty is committed to quarter sessions for borstal training, he can appeal against his conviction although the court has not sentenced him. The fact that the right of appeal against the "conviction" is independant of the "sentence" is clearly shown in *R.* v. *Faithfull* [1950] 2 All E.R. 1251. In this case the defendant was committed under s. 29 and sentenced, and then gave notice of appeal to quarter sessions against his conviction by the magistrate. The Court of Criminal Appeal reviewed this procedure, and stated that it was undesirable that the appeal committee should sentence a defendant before the time for appeal had passed, or until he had indicated his intention of not appealing, but it did not cast any doubt as to the right of the defendant to appeal against the conviction only.

The question under consideration then really resolves itself into this: if a defendant can appeal against the conviction only, may not a summary court grant him bail pending his appeal against this conviction, despite the fact that if the conviction were not appealed against the defendant would have to be com-

mitted in custody. Once it is granted that the conviction (finding of guilt) and the subsequent order of the court based upon this are two distinct matters it is difficult to see any logical grounds for arguing that the court has no power to bail. Whether bail should be granted is, of course, an entirely different matter, and in considering this a court would bear in mind the remarks of Lord Goddard concerning the great care with which the Divisional Court scrutinized the application for bail in the case of *Whitehouse*.

In conclusion it may be noted that this question of the power of a summary court to grant bail pending an appeal may arise, not only in connexion with s. 29 cases, but also with cases committed to quarter sessions under s. 20 of the Criminal Justice Act, and under s. 5 of the Vagrancy Act, 1824.

SINGLE WOMEN

[CONTRIBUTED]

In 2 *Halsbury* 582, it is stated: "A single woman who has a bastard child may take proceedings (for an affiliation order) but, where she has married after the child's birth it is impossible for her to obtain an order, whether she is living with her husband or not." It is proposed to consider in this article whether this is now a correct statement of the law, but it is right to say that the cited statement from *Halsbury* was written before *Jones* v. *Evans* (*infra*) was decided; the supplement directs attention to the effect of that case. It will be assumed throughout that, unless otherwise stated, the husband and father are different men.

So far as married women living with their husbands are concerned, it was recently re-affirmed in *Taylor* v. *Parry* (1951) 115 J.P. 119, that a married woman living with her husband cannot obtain an affiliation order for a child born by another man before the marriage.

Where the wife is not living with her husband and desires an affiliation order for a child born to her before the marriage, *Halsbury* cites *Peatfield* v. *Childs* (1899) 63 J.P. 117, as the authority for saying that a woman not living with her husband cannot obtain an order. There are two lines of cases which are relevant in considering this point.

The first line begins with *R.* v. *Luffe* (1807) 8 East 193 and ends with *Jones* v. *Evans* (1944) 108 J.P. 170. Atkinson, J., stated in the latter, at p. 175, that a wife could be a single woman for the purposes of the Bastardy Laws Amendment Act, 1872, s. 3, where there was a *de facto* separation and an uncondoned matrimonial offence which had lost for her her title to maintenance by her husband and her right to live with him (note that the words "uncondoned matrimonial offence" not "uncondoned adultery" were used). In all these cases it seems that the wife's offence was adultery, which had in fact resulted in the birth of a child after the marriage, and the affiliation proceedings were to obtain an order in respect of such child; in those circumstances a wife apart from her husband was held to be a single woman. In *Jones* v. *Davies* (1901) 65 J.P. 39 it was held that a mere colourable separation would not make a wife a single woman but that case is not relevant in the present instance. Apart from a "*dictum*," to be mentioned later, in *Taylor* v. *Parry* (*supra*), there seems to be no case in the books where the High Court have considered whether a wife, whose husband has deserted her or has committed some matrimonial offence and is apart from her, is a single woman or not (*Peatfield* v. *Childs* will be examined later on this point).

The next line of cases is that on which *Halsbury* relies for the statement cited at the start of this article. In *Stacey* v. *Lintell* (1879) 43 J.P. 510 a wife *living with her husband* sought an affiliation order in respect of a pre-marriage child. It was held that she could not obtain it on the grounds that she was not a single woman and also that, if an order were made, there would be two men liable to maintain the child, for, under the Poor Law Amendment Act, 1834, s. 57, the husband was liable to maintain any children which his wife might have had before her marriage, whether illegitimate or not. (This section was re-enacted in the Poor Law Act, 1930, s. 14.) Lush, J., however, did observe that, for a woman to be within s. 3 of the Bastardy Laws Amendment Act, 1872, she must be either "single or separated from her husband." In *Tozer* v. *Lake* (1879) 43 J.P. 656, and *Healey* v. *Wright* (1912) 76 J.P. 367, wives living with their husbands were likewise refused orders for children born before the marriage, but in those cases the grounds on which they were refused were more concerned with questions of service and procedure; it was stated, however, in *Healey* v. *Wright* (*supra*) that, if a woman issued a summons while single, she could obtain an order although she married between date of issue and date of hearing. The fact that her husband would also be liable to maintain the child was not apparently regarded as a bar to the order in such circumstances.

It will be noted that these three cases were all concerned with married women living with their husbands.

In *Peatfield* v. *Childs* the husband was unaware of his wife's illegitimate child when he married her but, on discovering its existence, he immediately ordered her to leave his house, refused to allow her to cohabit with him again and refused to provide her with money for the maintenance of herself or the child, so that she had been compelled to live apart from her husband since. It could be said nowadays, no doubt, that her husband had constructively deserted her as well as wilfully neglected to maintain her. The justices made an affiliation order in her favour but she was not represented when the case came before the High Court. Counsel for the father argued that she was not a single woman and referred to *Stacey* v. *Lintell*. The full judgments of the Court in *Peatfield's* case were as follows: "Lawrence, J.: 'I am clearly of the opinion that the magistrates were wrong. The woman had married her husband, who was liable for the maintenance of her illegitimate child, and his turning his wife out of doors does not relieve him of the liability to maintain her and her child. If this order was to stand, there would be two people liable to maintain this child.'

"Channell, J.: 'I concur'."

It will be seen that there is no reference in the judgments to the question whether the wife was a single woman or not and the case was decided solely on the point of the double liability. There were at the time, of course, several decisions of the High Court showing that a wife, who was apart from her husband and who had committed adultery, could be a single woman (*R.* v. *Luffe* (*supra*), *R.* v. *Collingwood* (1848) 12 J.P. 454 and *R.* v. *Pilkington* (1853) 17 J.P. 388.)

In *Boyce* v. *Cox* (1921) 85 J.P. 279, a married woman had obtained a separation order against her husband, which gave her the status of a *femme sole*. Magistrates later made an affiliation order against the father of a child born before the marriage. On appeal, both *Peatfield* v. *Childs* and *Stacey* v.

Lintell were cited to the High Court by counsel for the father and he also drew attention to the liability of the husband to maintain this child under the Poor Law Amendment Act, 1834. (It would seem that the husband still had this obligation although a separation order had been made against him *cf. Birmingham Union* v. *Timmins* (1918) 82 J.P. 279.) The High Court held that, as she had obtained a separation order, she was a single woman and, notwithstanding *Stacey's* and *Peatfield's* cases and the double liability, they upheld the affiliation order. Perusal of the judgments does not indicate how they distinguished those two cases; indeed, only Sankey, J., of the three judges, referred to them.

It is submitted, therefore, that after *Boyce* v. *Cox* the position was as follows: (*a*) if a wife was living with her husband, she was not a single woman and could not obtain an affiliation order, but (*b*) if she had the status of a single woman, she could obtain an affiliation order. *Stacey* v. *Lintell* was still good law in so far as it held that a wife living with her husband was not a single woman, but its authority was certainly impaired in regard to the double liability. As for *Peatfield* v. *Childs*, it seems as if its authority was indeed gravely weakened since, if the wife in *Peatfield's* case was a single woman, there was clearly a conflict between the two. In deciding whether to follow *Peatfield's* or *Boyce's* case, one must look to see which would give a just result. It can hardly be said that it is just or right that the putative father should escape all liability for his child, while the husband, who was not enjoying any "consortium" of his wife, should still be liable to maintain another man's child. (It is not forgotten that the guardians could obtain an affiliation order against the putative father should the child become chargeable nor that the husband's lack of "consortium" was due to his own fault but these are, it is submitted, minor matters in comparison.) The view is therefore advanced that, had the High Court been called upon to decide between *Peatfield's* and *Boyce's* cases, *Boyce's* case would have been followed.

What then was the position immediately after *Boyce's* case was decided? It was plain from the cases followed later in *Jones* v. *Evans* that a wife who had committed an uncondoned matrimonial offence and was apart from her husband, could obtain an affiliation order for a post-nuptial child. In all these cases the wife's offence had in fact been adultery which had resulted in the birth of a child after the marriage, but the statement of the law by Atkinson, J., in *Jones* v. *Evans* is wide enough to cover adultery which has not resulted in the birth of a child. Thus, if Miss Wilson had had a child before her marriage by Mr. Smith and had later married Mr. Robinson, and, after marriage, had left her husband and committed uncondoned and childless adultery with Mr. Brown, could she not then obtain an order against Mr. Smith for the maintenance of her illegitimate child? She would be a single woman within the definition laid down in *Jones* v. *Evans* and, being single, she could therefore obtain an order against Smith, as shown by *Boyce* v. *Cox*. *Peatfield* v. *Childs* would not, after *Boyce* v. *Cox* was decided, have prevented her from obtaining the order since it was plain that, once she had established her status as a single woman, the order could be made.

Turning now to the position where the husband has committed an uncondoned matrimonial offence and is apart from his wife, *Peatfield's* case seems to be the only decision of the High Court where the matrimonial offence had been committed by the husband. Atkinson, J., in *Jones* v. *Evans* refers only to offences by the wife but it would be remarkable if a sinning wife were to be in a better position than a sinned-against one. Where a husband had committed adultery and left his wife, it would be unjust that she should be unable to obtain an affiliation order against the father of a pre-marriage child and should be forced to apply for public assistance. It is true that the husband would still have been liable, no doubt, to maintain the child prior to the National Assistance Act, 1948, but the wife's position would be difficult indeed were the husband to have disappeared. Also, of course, one again gets the position that the putative father escapes all liability if the mother succeeds in keeping the child off public funds. It is submitted, by analogy from *Jones* v. *Evans*, that a wife becomes a single woman when she is apart from her husband and he has committed an uncondoned matrimonial offence rendering him unworthy of his wife's consortium and, so far as *Peatfield* v. *Childs* conflicts with *Jones* v. *Evans*, the latter should prevail. Where the uncondoned offence, by husband or wife, is adultery, it should not be difficult for the wife to prove this but it might be more difficult for her to prove that she herself had committed some other matrimonial offence, such as cruelty to her husband. However, if she and her husband were apart, it might be submitted that there would *prima facie* be desertion by the one or the other and it would be sufficient for her to prove that uncondoned offence. Where the parties have separated by agreement, a wife could not presumably bring herself within *Jones* v. *Evans* unless she had committed some uncondoned offence after the separation, which destroyed its basis, *e.g.*, a violation of the *Dum Casta* clause.

One arrives accordingly at the result that, after *Boyce* v. *Cox* was decided, any wife who could show herself to be a single woman could obtain an affiliation order for a pre-marriage child. Though there is actually no High Court decision on whether a wife who has been deserted by her husband or whose husband is apart from her and has committed a matrimonial offence, is or is not a single woman, it seems to follow logically from the *Jones* v. *Evans* line of cases that she would be a single woman, *Peatfield* v. *Childs* not having been decided on the status of a single woman at all. Finally, one may note an *obiter dictum* of Lord Goddard, C.J., in *Taylor* v. *Parry* (*supra*): "There is nothing absurd in holding that a married woman *whose husband has deserted her* or is serving a sentence of imprisonment or has been sent overseas on military or naval service is, for the purpose of the Bastardy Acts, a single woman because she is living entirely by herself."

No doubt it is a strong thing to say that the law as to married women apart from their husbands has been too widely stated by eminent authorities in text books, but one searches in vain for direct authority for the proposition that, after *Boyce* v. *Cox* was decided, a wife apart from her husband could not obtain an affiliation order for a pre-marriage child. The text books cite *Peatfield* v. *Childs* as the authority for that proposition but, as has been shown, the case was no authority on the question of single women at all and from *Boyce* v. *Cox* it is plain that a wife, being a single woman, could always obtain an order under such circumstances.

Be that as it may, the position has now been simplified by the passing of the National Assistance Act, 1948, which repeals the Poor Law Act, 1930, entirely and does not re-enact the provision in s. 14 of the 1930 Act that a husband is liable to maintain a child of his wife by another man before her marriage. The basis of *Stacey* v. *Lintell* and *Peatfield* v. *Childs* has, therefore, it is suggested, disappeared (so far as married women not living with their husbands are concerned), and it is clearly open to the High Court to review those two cases. It is submitted that the justice of making a man who is the father of an illegitimate child pay for its maintenance will go far to persuade the High Court to overrule the earlier cases and to hold, in accordance with the cited *dictum* of Lord Goddard, that a married woman not living with her husband because of his matrimonial offence can now obtain an affiliation order. An additional reason for overruling these cases is that, because of the National Assistance Act, no

one would now be liable to maintain pre-marriage children at the instance of their mother, if *Peatfield's* case were upheld, and she might therefore be driven to obtaining national assistance for them. The object of the Bastardy Acts has been said to be keeping children off public funds. The National Assistance Board or the local authority could, of course, itself obtain an affiliation order against the putative father once the child had received assistance, pursuant to the National Assistance Act, 1948, s. 44, or the Children Act, 1948, s. 26, but it is hardly socially desirable that the mother should be forced to put the child on public funds before anything can be done about the putative father's liability. The opinion is accordingly given that a married woman, who is living apart from her husband because of his uncondoned matrimonial offence or because of her uncondoned matrimonial offence (whatever the nature of the offence), can now obtain an affiliation order against the putative father of a child born before her marriage.

In conclusion, the question of the liability of the husband, who is himself the father of a child born to his wife before their marriage, arises when it has not been legitimated by their subsequent marriage because one of them was married to someone else at the time of the birth. It is stated in *Lieck and Morrison on Domestic Proceedings*, p. 86, that a wife who has obtained a separation order may obtain an affiliation order against her husband in respect of such a child. Further opinions are cited at 110 J.P.N. 240 and 112 J.P.N. 550 that wives who have deserted their husbands and wives who have been deserted by their husbands are single women and can obtain affiliation orders against their husbands in respect of such children.

G.S.W.

PERMITTED SELLING PRICES AS LOCAL LAND CHARGES

The provisions in ss. 7 and 8 of the Building Materials and Housing Act, 1945, for enforcement of maximum selling prices or maximum rents attached as conditions to the issue of a civil building licence, have produced some curious results. One complication, in the relation of these provisions to the Land Charges Act, 1925, came to our notice recently. The facts given to us were, slightly simplified, as follows. A condition of the civil building licence of a dwelling-house fixed a maximum selling price of £1,300. The local authority's officer did not register this as a local land charge, in pursuance of his duty under s. 8 (1) of the Act of 1945. The builder was not, of course, affected by the failure to register, but since he sold the house for £1,200, a lower price than he might lawfully have received, no question arises about him. The purchaser's solicitor made the proper searches, but we are not sure whether he also obtained a certificate of search, which would in his favour have been conclusive as to the absence of a charge. While this purchaser was owner, the clerk of the local authority woke up to his duty and registered the condition fixing £1,300 as the selling price. This first purchaser, the second owner in the chain, then entered into a contract to sell to a third owner, for a price much above the maximum fixed, and, on search, this second purchaser's solicitors discovered the registered charge. The solicitors for the then vendor (who had, it will be remembered, made their own search at the earlier stage when he was about to purchase) complained of the subsequent entry of a charge, which the registrar then cancelled—whereupon the contract for the second sale went through, and a purchase price of £2,000 was paid. What, now, is the position of the present owner, third in the chain? He bought, certainly, *bona fide* and (we think it safe in the circumstances to say) without notice, and it can hardly be supposed that either he or his vendor became liable to prosecution by reason of the sale. But suppose the clerk of the local authority now has second thoughts and, concluding that the purported cancellation of the charge was wrong, decides to register it once again? One third or thereabouts of the value of the present owner's investment will have vanished, if such registration be effective. To put the problem in another way: can a local authority's officer register such a charge at any time, however distant from the point of time at which in accordance with the Act of 1945 he ought to have done so, and however many times the property has meanwhile changed hands?

The cancellation by the registrar at the second owner's instance, of a charge which had been registered in the second owner's period of ownership, raises difficulties of its own, and, although these are beside the general question we have posed, it may be worth considering them, since the same thing could happen elsewhere. If the solicitor acting for the first purchaser (*i.e.*, the second owner) obtained a certificate of search, that certificate would by s. 17 (3) of the Act of 1925 have been conclusive in his favour, and so, upon reading that section together with s. 13 (2) of the Land Charges Order, 1934, it may be suggested that, on having his attention drawn to the matter, it would be the duty of the registrar to cancel the entry of charge if already made, and that (if this is what happened in the time of the second owner, *i.e.*, if the charge was cancelled for this reason) it could not afterwards be reinstated by subsequent re-entry, because it was already unenforceable. This (which incidentally would give a further reason for what we have always regarded as the better practice, *viz.*, to obtain a certificate of search) would mean, in such a case that justice was done.

As against this, the better opinion seems to us to be that the " purchaser or intending purchaser " in s. 17 (3) of the Act of 1925 is merely the person to whom the certificate of search is given, not any and every future purchaser, but if so a local land charge, which had already been properly registered before the date of the erroneous certificate, would (though unenforceable against the purchaser who obtained the certificate) not be unenforceable by reason of that certificate against a later purchaser, and ought therefore not to be cancelled under s. 13 (2) of the Order. (On this view, again, it does not matter how the cancellation in the time of the second owner came about in the case we are discussing.) It seems also to follow that the charge can be registered *de novo*, and thus become binding upon a purchaser from the second owner, or from whoever is the owner at the time of the belated registration, and can affect, therefore, the value of that owner's property.

Indeed, passing back to the main question, it seems that failure to register under the Land Charges Act, 1925, in accordance with the duty imposed by s. 8 (1) of the Act of 1945, whilst it may no doubt give to a person damnified a right of action against the official who failed in his duty, does not preclude subsequent registration at any time. The result may be serious. In the case before us, the second owner sold lawfully and the third owner bought lawfully for £2,000, which was presumably the market price. The third owner's solicitors made the proper searches, and they may have taken the precaution of obtaining a certificate of search, conclusive in their client's favour. But,

if the charge is thereafter registered, a fourth purchaser will be unable to sell for more than the limited price, and will therefore be unwilling to pay the third puchaser more than the limited price; an innocent person's property will thus have been seriously and undeservedly depreciated.

The only remedy which suggests itself to us would be for Parliament to enact that the charge should not be capable of registration unless registered within a certain time, or within the period of ownership of the person against whom it was first designed to take effect. But not only might this defeat the policy of the Act of 1945 in regard to these limited prices; there seems no special reason for an enactment in this sense confined to these particular charges. And a general enactment in this sense would be so far reaching that serious thought about its implications would be necessary, before it could be introduced.

THE RIVERS (PREVENTION OF POLLUTION) ACT, 1951

By S. McLEOD RICHARDSON

(*Concluded from p. 668, ante*)

PENALTIES

The Act departs from previous practice in creating criminal offences, and s. 2 provides heavy penalties for contravention of its provisions. For a first offence punishable under the section, conviction on indictment may result in a fine not exceeding £200 and on summary conviction the maximum fine is £50. If it is shown to the satisfaction of the court that the offence is substantially a repetition or continuation of a previous offence for which the offender was convicted under the Act or otherwise, the maximum punishment is either or both of imprisonment for six months, and a fine consisting of the greater of £50 for each day of repetition or continuation of the earlier offence, or £500. On summary conviction the term of imprisonment is three months and the fine £10 for each day or £100. If the offence is proved to have been committed with the consent or connivance of, or to be attributable to the neglect of, a director, manager, secretary, or other similar officer of a body corporate committing the offence, or any person purporting to act in any such capacity, then he too may be proceeded against and punished. He may become liable to the increased penalty for a second conviction unless he can establish his ignorance of the earlier conviction, together with the fact that he was not then acting or purporting to act in the capacity in which he is charged. In assessing the maximum fine to which he is liable, any repetition occurring at a time when he was unable to prevent it will be disregarded. The expression "director" here includes a member of a body corporate established to carry on a nationalized industry.

ANTICIPATED CONTRAVENTION

The strengthening of the law is continued in s. 3. The Act of 1876 provided for proceedings in the county court for an order that the offender should abstain from contravention; the question of a penalty did not arise unless there was default in complying with the order. Section 2 of the new Act allows a prosecution which may lead to fines and imprisonment. The county court procedure reappears in a revised and more effective form in s. 3. This provides that, where the river board apprehend that a contravention of s. 2 (1) may occur by reason of the use or proposed use of the stream for the disposal of any matter, or of any land for the disposal or storage of any matter, or of any vessel in a defective state of repair for the carriage of cargoes which may cause pollution, they may apply to the court for an order. This may prohibit or impose conditions on the use complained of, or be such other order as the court thinks fit. A further order may require the removal of matter from the stream or land and may authorize the river board, in default of compliance, to undertake this work themselves and recover their expenses. A similar order for removal may be made on a conviction under s. 2 in suitable circumstances, and subject to proper notice.

An order made against a person under this section counts against him as a conviction for the purposes of s. 2, and a conviction for an offence under s. 2 (1) which arises from a contravention of or failure to comply with the order may give rise to the increased penalties referred to above. River boards are required to furnish to interested persons information as to orders made under the section.

The protection of s. 8 (2) applies to applications under this section as it does to proceedings under s. 2 (1), and a river board are debarred from making application for an order in respect of apprehended pollution from trade or sewage effluent, without the consent of the Minister, for a period of seven years which, however, may be extended or curtailed.

BYELAWS

Reference has been made to the power under s. 5 of making byelaws for prescribing standards. Byelaws may also be made for prohibiting or regulating the washing or cleansing in the stream of any things or the depositing there of litter or other objectionable matter, and for prohibiting or regulating the keeping or use on the stream of vessels provided with sanitary appliances which may discharge polluting matter. Contravention of these byelaws renders the offender liable to a fine not exceeding £50, and a continuing offence against byelaws relating to sanitary appliances on vessels may lead to a continuing fine of £5 per day.

Before making any byelaws under the section the river board must give proper notice of their intention to any body designated to them by the Minister as being representative of interested persons, and they must have regard to the character and flow of the stream and to its present and possible future uses. They must also, before prescribing standards by byelaw, make any necessary survey of the area in which the stream or affected part of the stream is situated.

Effluent complying with prescribed standards will not be treated as causing the water to be poisonous or injurious to fish, or to the spawning grounds, spawn or food of fish, for the purposes of the Salmon and Freshwater Fisheries Act, 1923, s. 8 (1).

Section 5 contains a further protection for trade and sewage effluent. It provides for a limited form of licensed pollution in a case where it is proposed to take steps to ensure that any effluent will comply with the standards prescribed by byelaws, or to enable the discontinuation of the discharge, but where it is not possible to take or complete the steps before the byelaws come into force. In such a case the river board may direct that the effluent be treated as complying with the standards for a specified period, and may impose suitable conditions.

CONTROL OF NEW OPENINGS AND DISCHARGES

It has been noted how s. 3 allows the river board to take steps in anticipation of offences against the Act. Section 7 combines with that section to justify the short title, since in these two sections are contained the directly preventive measures.

By s. 7, which relates to trade or sewage effluent, it becomes an offence to bring into use without the consent of the river board a new or altered outlet, that is, an outlet wholly or partly constructed on or after the date on which the section came into force (in most cases October 1) or substantially altered thereafter. The same considerations apply to a new discharge, which is defined as one not, as respects nature, composition, temperature and rate of discharge, substantially a continuation of a discharge made within the preceding twelve months by the same or another outlet. A reduction in temperature, volume, or rate does not bring a discharge within the definition.

An application for consent under the section is not necessary in the case of a new or altered outlet forming part of the sewage disposal or sewerage works of a local authority, where the scheme has been approved by the Minister or loan sanction obtained.

The river board may impose conditions on their consent, and these may also be imposed by notice in a case where consent has not been sought before the outlet is used or the discharge commences. The conditions must be reviewed periodically and may be varied or revoked by the board or, in default, by the Minister, and they remain in force as affecting the land, outlet, or premises concerned until so revoked. The board must keep a register of conditions for the time being in force and this may be inspected by interested persons. The register is conclusive, in favour of a person charged under the section, as to the conditions imposed on the discharge of an effluent.

The conditions may relate, in the case of an outlet, to its point of discharge, its construction, or to the use of that or any other outlet for the discharge of effluent from the same land or premises. In the case of a discharge, they may relate to the nature, composition, temperature, volume, or rate of discharge of effluent from the land or premises in question. Consent relating to an outlet must not be granted unless it is so constructed as to comply with conditions designed to permit the board to take samples of the effluent.

Failure to obtain consent, or comply with conditions to be satisfied before an outlet is used or a discharge begins, renders the offender liable to a fine not exceeding £200 on conviction on indictment or £50 on summary conviction. Any person causing or knowingly permitting to enter a stream an effluent not complying with conditions is guilty of an offence punishable under s. 2, and the provisions of s. 3 apply as though this provision were included in s. 2 (1).

The river board must not unreasonably withhold their consent to the use of a new or altered outlet, and conditions must be reasonably imposed and variations reasonable. In case of dispute, provision is made for the question to be determined by the Minister who is empowered to give appropriate directions. Until such directions are given, however, the section applies as though the board's decision had not been unreasonable, and in consequence this must be complied with in the meantime. The board are not permitted to delay the granting or refusal of consent, and if at the end of three months from the making of an application they have failed to give notice of their decision, then the consent will be deemed to be given unconditionally at that time.

The section further provides that three months' notice must be given before bringing into use a new or altered outlet discharging into, or commencing a new discharge into, any tidal waters or part of the sea included in the area of a river board for the purposes of its functions relating to fisheries. A new outlet must be constructed so as to permit the taking of samples. No notice is required in respect of a new or altered outlet forming part of the sewage disposal or sewerage works of a local authority if its construction or alteration has been approved by the Minister or loan sanction obtained.

UNITED DISTRICTS

For the better prevention of pollution, the Minister is empowered by s. 9 to provide by order under the Public Health Act, 1936, s. 6, for the constitution of a united district for the purpose of sewage disposal or sewerage functions, and for the constitution of a joint board. In this case, however, he may do so wherever he considers it to be necessary for reasons connected with the prevention of river pollution, including the pollution of the tidal part of a river, without the usual necessity for the application of the local authorities concerned or any of them. The section gives the Minister the further power to provide by order that a sewer vested in a local authority shall communicate with a sewer of, or discharge into the sewage disposal works of, another authority, and where such an order is made the local authorities concerned may enter into any necessary agreement, any difference being determined by the Minister. If objections are made to such an order it is to be subject to special parliamentary procedure, unless all objections are withdrawn and the order is made in the terms of the draft set out in the notice which the Minister is required to give to the local authorities concerned.

THE SEA AND TIDAL WATERS

It will be remembered that the definition of " stream " contained in s. 11 (1) excludes tidal waters save as otherwise provided. Section 6 provides that the Minister may make an order, which may be varied or revoked, applying to any specified tidal waters or parts of the sea all or any of the provisions of ss. 2 to 5. The order may not be made without the application of a river board or some person appearing to the Minister to be interested, and a local inquiry is necessary. The application must include a draft of the proposed order, though this may be amended by the Minister. Provision is made for the publication of notices and the service and inspection of copies of the application.

The application of s. 7 may also be extended under this section, though the provisions of s. 7 (16) are excepted since these relate already to discharges into tidal waters or parts of the sea, and accordingly this subsection will cease to apply to the waters affected by an order extending the application of the earlier provisions of the section. A further limitation on the powers granted by s. 6 is that the provisions of s. 3 (1) (*c*) as to the use or proposed use of a defective vessel may not be extended so as to apply to tidal waters or parts of the sea within the jurisdiction of a harbour authority within the meaning of the Merchant Shipping Act, 1894.

MINOR OFFENCES

Two further offences, each punishable on summary conviction by a maximum fine of £50, are created by s. 4. The first of these is committed when, without the consent of the river board, part of the channel or bed of a stream is cleansed of a deposit which has accumulated by reason of the holding back of the water by a dam, weir, or sluice, in such a manner that the deposit is carried away in suspension by the water. The second is committed when, again without the consent of the board, any substantial amount of vegetation is cut or uprooted in the stream, or so near that it falls in, and is allowed to remain in the stream. In both cases the consent is not unreasonably to be withheld and in case of dispute the Minister is to decide. The former offence is not committed where the act is done in the exercise of powers under any enactment relating to land drainage, flood prevention, or navigation.

RESTRICTIONS ON PROCEEDINGS

Restrictions on the river boards' powers to proceed in respect of offences brought about by trade or sewage effluent

have been noted above. Section 8 further provides that proceedings for such offences against s. 2 (1) may be brought only by the Attorney-General or a river board and proceedings for any other offences against the Act may be instituted only by or with the consent of the Attorney-General or by a river board. Where consent is required to proceedings under the Summary Jurisdiction Acts by a river board in respect of a contravention of s. 2 (1) the normal period of limitation does not apply, and the proceedings may be taken at any time within two months of the giving of the consent provided that this time is within twelve months after the contravention.

A river board must give at least one month's notice to an offender that proceedings against him are contemplated, before instituting such proceedings.

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Hilbery and Pilcher, JJ.)

R. *v.* FUSSELL

October 8, 1951

Road Traffic—Attempting to take and drive away motor vehicle—Attempt to commit indictable offence which may be dealt with summarily—Jurisdiction of justices to deal with charge summarily—Criminal Justice Act, 1925 (15 *and* 16 *Geo.* 5, *c.* 86), *s.* 24 (1), *sch. II, para.* 17—*Road Traffic Act*, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 28 (1).

APPEAL against sentence.

The appellant was convicted by a court of summary jurisdiction at Exeter of attempting to take and drive away a motor car without the owner's consent, and, under s. 20 (3) of the Criminal Justice Act, 1948, was committed for sentence to Devon Quarter Sessions where he was sentenced to borstal training. He appealed on the ground that the offence of taking and driving away a car without consent was not an indictable offence triable summarily within the meaning of s. 24 (1) of and sch. II to the Criminal Justice Act, 1925, and, therefore, an attempt to commit the offence was not within the jurisdiction of the magistrates.

Held, that the offence under s. 28 (1) of the Road Traffic Act, 1930, being triable either summarily or on indictment, was an indictable offence which might be dealt with summarily; that by virtue of sch. II, para. 17, to the Criminal Justice Act, 1925, which entitles magistrates to deal summarily with attempting to commit any indictable offence which may be dealt with summarily, the magistrates had jurisdiction to deal summarily with the offence in the present case; and that, therefore, the appeal must be dismissed.

Appeal dismissed.

Counsel: *W. H. E. James* for the appellant; *D. M. Scott* for the Crown.

Solicitors: *Registrar*, Court of Criminal Appeal; *White & Leonard*, for *Cocks & Ashford*, Exeter.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

KING'S BENCH DIVISION

(Before Lord Goddard, C.J., Hilbery and Pilcher, JJ.)

CAREY AND OTHERS *v.* HEATH

October 11, 1951

Road Traffic—Motor vehicle—Registration and licensing—General trade licence—Purpose of hauling broken down vehicles under contract with owners—Not business of "manufacturer, or repairer of or dealer in mechanically propelled vehicles"—Use and construction—Lorry towed by breakdown car—Front wheels of lorry lifted off road by crane—Whether "trailer with not more than two wheels"—Road Traffic Act, 1930 (20 *and* 24 *Geo.* 5, *c.* 43), *s.* 17—*Motor Vehicles (Construction and Use) Regulations*, 1947 (*S.R. & O.* 1947 *No.* 670), *reg.* 85 (iii)—*Road Vehicles (Registration and Licensing) Regulations*, 1949 (*S.I.* 1949 *No.* 1618), *reg.* 29, *art. D.*

CASE STATED by Buckinghamshire justices.

At a court of summary jurisdiction at Chesham informations were preferred by the respondent, Edward William Heath, charging the appellants, George Henry Walter Carey and others, (i) with using a motor lorry under a general trade licence for a purpose other than the purpose for which such licence was authorized to be used, namely, for the purpose of conveying motor vehicles for the Ministry of Supply, contrary to reg. 29, art. D, of the Road Vehicles (Registration and Licensing) Regulations, 1949, which provides: "A general trade licence shall not be used upon any vehicle other than a vehicle which is in the possession of the holder of such licence in the course of his business as a manufacturer or repairer of or dealer in mechanically propelled vehicles . . ."; (ii) with a breach of s. 17 (2) of the Road Traffic Act, 1930, which provides: "Where a motor vehicle other than a heavy locomotive or a light locomotive is drawing a trailer or trailers on a highway, one person, in addition to the driver of the vehicle, shall be carried either on the vehicle or on the trailer for the purpose of attending to the trailer or trailers," the allegation being that at the material time the driver of a motor car which was drawing a trailer was not accompanied by a second person. By reg. 85 of the Motor Vehicles (Construction and Use) Regulations, 1947, it is provided: "The requirements of s. 17 of the Road Traffic Act, 1930, with regard to the employment of drivers and attendants shall not apply in the following cases . . . (iii) where a trailer with not more than two wheels is drawn by a motor car or motor cycle . . ."

With regard to the first information, the appellant, Carey, was the director of a company which had a contract with the Ministry of Supply for hauling motor vehicles which had broken down from one depot of the Ministry to another depot where they were to be repaired. Another appellant was one of the appellant's drivers. The company bought and sold motor cars and a general trade licence had been granted to the appellant Carey personally. The justices were of opinion "that the towing of motor lorries for hire or reward was not part of the business of a dealer in mechanically propelled vehicles" and convicted on that information.

With regard to the second information the appellants used a breakdown van fitted with a crane and chain so that the front wheels of a lorry which was being towed by it were lifted off the road with which its rear wheels only were in contact, the driver of the van not being accompanied by any other person. The justices held that the lorry which was being towed was not a two-wheeled trailer within the meaning of reg. 85 (iii) of the regulations of 1947, and convicted on that information also. The defendants appealed.

Held, (i) that the words of reg. 29, art. D, of the regulations of 1949 were clear and that, though a haulage contractor might have another business of a dealer in mechanically propelled vehicles, he was not, when he was acting as haulage contractor, a dealer in such vehicles, and that the justices had rightly convicted on that information; (ii) that the trailer contemplated by reg. 85 of the regulations of 1947 was a trailer constructed with not more than two wheels, and that it was impossible to say that, because at the moment when the lorry was being towed two of its wheels were lifted off the ground, it thereby became a two-wheeled and not a four-wheeled lorry. The justices had, therefore, rightly convicted on that information also, and the appeals must be dismissed.

Appeals dismissed.

Counsel: *E. Daly Lewis* for the appellants; *Michael Havers* for the respondents.

Solicitors: *Ellis & Ellis*, for *Horwood & James*, Aylesbury; *Bennett, Ferris & Bennett*, for *Bray & Bray*, Leicester.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

D'ALESSIO AND ANOTHER *v.* ENFIELD U.D.C.

October 5, 1951

Town and Country Planning—Enforcement order—Development in contravention of previous planning control—Determination by Minister that use of premises to be deemed to comply with planning control till certain date—Section of statute applicable—Building Restrictions (War-time Contraventions) Act, 1946 (9 *and* 10 *Geo.* 6, *c.* 35), *s.* 2 (8)—*Town and Country Planning Act*, 1947 (10 *and* 11 *Geo.* 6, *c.* 51), *s.* 75 (2) (*a*), *s.* 76 (5).

CASE STATED by Middlesex justices.

At a court of summary jurisdiction at Enfield, the magistrates heard an appeal under s. 23 (4) of the Town and Country Planning Act, 1947, by the appellants, Albert d'Alessio and another, against an enforcement notice under ss. 23 and 75 of the Act served on the appellants by the respondents, Enfield Urban District Council. The appellants had a yard at Enfield, where they had carried on the business of scrap merchants for some years. During the war they also carried on at the yard a business of making light engineering parts, which amounted to a development and was a breach of the existing legislation with regard to town and country planning. The Minister of Town and Country Planning had made an order under s. 2 (8) of the Building Restrictions (War-time Contraventions) Act, 1946, that, subject to compliance with certain conditions, the use of the

premises for the manufacture of small metal parts and fittings should be deemed to comply with the planning control until December 31, 1949, and no longer. The appellants contended that, by reason of the Minister's order, no permission for the development was required, but the justices, holding that s. 75 of the Act of 1947 was applicable, dismissed the appeal. The appellants appealed to the Divisional Court.

By s. 75 of the Act of 1947 : " (1) Where any works on land existing at the appointed day [July 1, 1948] were carried out, or any use to which land is put on that day was begun, in contravention of previous planning control, then, subject to the provisions of this section, the provisions of Part III of this Act with respect to enforcement notices shall apply in relation thereto as they apply in relation to development carried out after the appointed day without the grant of permission in that behalf under the said Part III . . . (2) Where any such works as aforesaid were carried out, or any such use as aforesaid was begun, during the war period as defined by the Building Restrictions (War-time Contraventions) Act, 1946, then—(*a*) if by virtue of the provisions of that Act, or of any determination effected thereunder (whether before or after the appointed day), the works or use are deemed to comply with planning control within the meaning of that Act, the provisions of this section shall not apply, or, as the case may be, shall cease to apply to those works or that use . . . "

By s. 76 (1) : " Where any works on land existing at the appointed day, or any use to which land is put on that day, has been authorized by a permission granted subject to conditions under a planning scheme or under an interim development order, the provisions of Part III of this Act shall apply in relation to those works or that use as if the conditions had been imposed on the grant of planning permission under the said Part III. (2) Without prejudice to the generality of the foregoing subsection, where any such permission as aforesaid was granted subject to conditions (in whatever form) restricting the period for which the works or use may be continued on the land, then, if that period has not expired at the appointed day " —as it had not in this case—" and the words are not removed, or the use discontinued, at the expiration of that period, the provisions of Part III of this Act with respect to enforcement notices shall apply in relation thereto as if the works had been carried out, or the use begun, as the case may be, at the expiration of that period and without the grant of permission in that behalf under the said Part III . . . (5) Where at any time before the appointed day, it has been determined under the Building Restrictions (War-time Contraventions) Act, 1946, that any works on land or any use of land shall be deemed to comply with planning control within the meaning of that Act subject to any conditions specified in the determination, the provisions of this section shall apply in relation to those works or that use, and in relation to any interest in the land in question, as if the said conditions had been imposed on the grant of permission under a planning scheme or under an interim development order ; and notwithstanding any breach of those conditions, the provisions of the last foregoing section shall not apply thereto."

Held, that the effect of the determination by the Minister was to exclude the application of s. 75 to the case, and that the justices should have held that s. 76 was the section applicable and should have set aside the order. The appeal must, therefore, be allowed.

Appeal allowed.

Counsel : *Kerrigan* for the appellants ; *Stockdale* for the respondents.

Solicitors : *Stanley de Leon & Co.* ; *T. D. Jones & Co.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 69.

DRUNK IN CHARGE OF A TUG

The fifty year old master of a tug appeared at Liverpool City Magistrates' Court recently, to answer a charge laid under s. 220 of the Merchant Shipping Act, 1894. The charge alleged that the defendant, being the master of a named British ship, by reason of drunkenness, did an act tending immediately to endanger the life or limb of a person belonging to or on board the said ship.

The defendant pleaded not guilty to the charge, and evidence was given for the prosecution that on a date in June the defendant was seen navigating his tug in an erratic manner in the Mersey.

The tug collided twice with the lock gates, and eventually the crew, who refused to dock another ship, forced the defendant to draw in to the river wall.

When the owner sent instructions for the mate to take over, defendant struck him, and the police were called. The defendant was kept under control while the mate took the tug into dock. Defendant, after being suspended for a fortnight by his employers, had been reinstated.

The magistrates found the charge proved and imposed a fine of £10.

COMMENT

Section 220 of the Act of 1894 provides that if a master . . . belonging to a British ship . . . by reason of drunkenness does any act tending to the immediate loss, destruction, or serious damage to the ship, or tending immediately to endanger the life or limb of a person belonging to or on board the ship, he shall be guilty of a misdemeanour.

" Master " is defined in s. 742 of the Act as including every person (except a pilot) having command or charge of any ship.

(The writer is indebted to Mr. H. A. G. Langton, M.B.E., clerk to the Liverpool City Justices, for information in regard to this case.)

R.L.H.

No. 70.

AN IMPATIENT BARONET

A baronet appeared at North Walsham Magistrates' Court recently, charged with unlawfully trespassing upon the railway at Sloley belonging to the British Transport Commission, contrary to s. 55 of the British Transport Commission Act, 1949.

For the prosecution, a crossing gate keeper stated that the defendant drew up at the crossing in his car when the gates were closed, four and half minutes before a train was due. Defendant got out of his car and opened the gates to let himself through, and to do this he had to alter the signal before he could unlock the gates. The train was pulled up, and when it was pointed out to the defendant that he might have been killed, he said that he could not wait as he had a most important job to do which had to be done on time.

Defendant, who did not appear, was fined £2 and ordered to pay 2*s.* 6*d.* costs.

COMMENT

By s. 55 of the British Transport Commission Act, 1949, the maximum penalty which may be imposed for trespassing upon any of the lines of railway belonging to the Commission is 40*s*.

All motorists will have shared, at one time or another, the feelings of impatience manifested by the defendant but the writer has not, hitherto, heard of any motorist who allowed his feelings of impatience to be converted into such vigorous action !

(The writer is indebted to Mr. Frederick R. Bell, clerk to the Justices of the Petty Sessional Division of Tunstead and Happing, for information in regard to this case.)

R.L.H.

No. 71.

THE MISDEEDS OF THREE YOUNG TELEPHONE OPERATORS

Three girls, all under twenty, appeared at Berkhamsted Magistrates' Court recently each charged with persistently making telephone calls without reasonable cause and for the purpose of causing annoyance to other persons, contrary to s. 10 (2) (*c*) of the Post Office (Amendment) Act, 1935.

For the prosecution, it was stated that the defendants, who at the material time were all employed at Boxmoor exchange, pestered three private subscribers in the London area with unnecessary calls " out of devilment."

In one case the proprietress of a hairdressing and tobacconist business was stated to have received these calls as many as twenty times a day and in the space of three months to have had two hundred of them. The second subscriber who had been troubled was a elderly householder and the third was the Hungaria Restaurant in Lower Regent Street, to which some 300 of the calls had been made.

It was stated on behalf of the defendants, who all pleaded guilty, that they had first been suspended and had since lost their employment.

Each defendant was fined £5 and ordered to pay £1 13*s.* 4*d.* costs.

COMMENT

This case throws an interesting light upon the domestic entertainment enjoyed at one telephone exchange, and readers of this report who hereafter find difficulty in attracting the attention of an operator at their own exchange may possibly have suspicions as to why they find it impossible to secure attention !

Section 10 of the Act of 1935 is, of course, the section which is normally invoked where members of the public make use of the telephone to send indecent and obscene messages to other members of the public. The section also makes it an offence to send a message by telephone or telegram which the sender knows to be false, for the

purpose of causing annoyance, inconvenience, or needless anxiety to any other person. Offences against the section may be punished by one month's imprisonment and a fine of £10.

(The writer is indebted to Mr. Lovel F. Smeathman, clerk to the Dacorum Justices, for information in regard to this case.) R.L.H.

PENALTIES

Caerphilly—August, 1951—(1) selling milk containing five *per cent.* added water, (2) selling milk containing eight *per cent.* added water—fined a total of £10. To pay £4 costs. Defendant a milk producer for many years without complaint.

Bradford City—August, 1951—(1) taking a motor van without consent, (2) using the van without insurance (two defendants)—each fined £50 and disqualified from driving for three years. Defendants, youths of nineteen and eighteen, took the van and turned it over when they skidded wrecking the van.

Sheffield—August, 1951—(1) driving a car while disqualified, (2) taking a car without consent, (3) no insurance—six months' imprisonment and disqualified from driving for five years.

Cheltenham—August, 1951—under the influence of drink while in charge of a car—fined £20 and disqualified from driving for ten years. Defendant, a man of seventy with thirty years' driving experience, said he did not intend to drive again. He severely damaged another car.

Dudley—August, 1951—carrying a dangerous load on a vehicle—fined £3. To pay 15*s.* costs. A large tyre bounced off a lorry driven by defendant, mounted the pavement, struck a woman pedestrian in the back and knocked her to the ground.

Oxford—August, 1951—malicious damage to property (five charges)—six months' imprisonment each charge (concurrent). Defendant, a thirty year old Polish labourer, smashed six plate glass windows of business premises in Oxford because he was not satisfied with the treatment he had received in this country and wanted to draw attention to his position. Estimated damage £197. Defendant to be recommended for deportation.

Frome—August, 1951—unlawfully practising dentistry (two charges)—fined a total of £4. To pay £3 8*s.* costs. Defendant made a set of false teeth for a man who was well pleased with them.

Stowmarket—August, 1951—illicitly slaughtering a boar—fined £100.

Stowmarket—August, 1951—having for sale meat not sold on behalf of the Ministry of Food—three months' imprisonment. Defendant, a butcher, was stated to have paid over £700 in fines for food offences since 1942. His licence had been revoked and he was seeking to sell his business.

Dudley—August, 1951—assaulting a police inspector—fined £20. Defendant, aged twenty, was fighting his father in the street and when the inspector intervened defendant swung a pick stave over his head and brought it down with great force on to the inspector's wrist.

Salisbury—August, 1951—(1) incurring a debt of 2*s.* 3*d.* by fraud—(2) drunk and disorderly—two months' imprisonment. Defendant, after eating a meal in a restaurant, refused to accept his bill saying he had no money. Numerous convictions proved against defendant. Defendant released from prison very recently.

PLAYING FOR HEAVY STEAKS

Now that the tumult and the shouting have died away and the new Parliament has been chosen, propriety no longer enjoins silence upon us. So long as the General Election was in progress and the fate of the nation in the balance, we deemed it right to refrain from comment which might influence any considerable body of opinion and induce readers of this Journal to cast their votes in a particular way. Now our lips are unsealed at last.

We can now tell the full story of an episode at London Airport in July, 1951, and its sequel in the magistrates' court at Uxbridge in October. The circumstances reveal an oppressive attack upon private enterprise and a dastardly attempt to starve this beleaguered Island into submission to governmental tyranny.

Mr. Roger Shaw, of Taplow, Bucks., arrived from Brussels at London Airport on July 25, and at the Customs Shed made due declaration of the articles, purchased abroad, which he was carrying. Among these articles were certain foodstuffs, and among these foodstuffs, *inter alia*, was a two-pound steak.

Any reasonable person, regarding the present situation of food supplies in this country, would spontaneously acclaim this public-spirited protest, expressed by means of a token private import, against the scarcity and poor quality of the meat made available to the public by monopolistic bulk-buying schemes. No such natural feelings were aroused in the implacable breast of the Customs Officer. It is possible, of course, to take a charitable view and assume him to be a youthful person who found difficulty in calling to mind the pre-war days of plenty, and who therefore cannot be expected to have recognized a two-pound steak when he saw one; even if he is an older man, his reactions may be seen as an application of the maxim *omne ignotum pro mirabili*—"the unknown always causes consternation." Whatever his motive the fact remains that, instead of passing Mr. Shaw and his precious burden as rapidly as possible, he entered into a highly legalistic dissertation upon the provisions of the Customs and Inland Revenue Act, 1881, and the Importation of Carcases (Prohibition) Order, 1926. The issue of law, according to him, depended upon a preliminary question of fact: was the steak cooked or raw? The intending importer upheld the former status: it was cooked meat; cooked meat is foodstuff, and may be freely imported. The Customs Officer insisted that the steak was raw: as such it was a carcase or part of a carcase, and its importation was therefore unlawful under the Order of 1926.

Now, the people of this country have been endowed by Providence with many civic and other virtues, and we are not of the company of those ill-affected persons who would deny to Englishmen any credit for those qualities which have made them great. But not even the most patriotic of our fellow-countrymen, nor the most anglophile of our foreign visitors, can justly claim on our behalf the possession of a high standard of efficiency in the culinary art, or a keen sense of discrimination in matters of food. It is the general consensus of opinion, among those who return to their native England after a brief sojourn with the *gourmets* of France, Italy or Switzerland, that if the watery soups, nondescript stews, bedraggled vegetables and stringy bits of gristle that are swallowed uncomplainingly by thousands of docile lunchers-out in English eating-houses were temerariously set before his customers by any *restaurateur* in Paris or Milan, his windows would be smashed and his premises wrecked by an indignant mob, and red revolution would break out in no time. It is understandable, therefore, that it was particularly galling for Mr. Shaw, fresh from the sumptuary pleasures of the continental table, to find an Englishman, and a Customs Officer at that, presuming to dogmatize about the culinary condition of a delicacy brought, at considerable trouble and expense, from abroad.

There are, however, special as well as general grounds of sympathy for Mr. Shaw in the trials which he was forced to endure. The law recognizes such a thing as provocation, which may be sufficient to extenuate and, in extreme cases, altogether to excuse the commission of an offence. Judges have laid it down that the provocation may be so great as to deprive the accused person of all self-control, and so exonerate him from the charge of having deliberately formed the guilty intent. It is difficult to imagine a more extreme form of provocation than a prolonged debate on legal niceties with a two-pound steak as the subject of dispute lying on the table between the contesting parties. There will be few among a food-conscious population who can lay their hands on their stomachs and assert that the steak-holder was blameworthy in the action he subsequently took.

It says much for Mr. Shaw's *sang-froid* that, even at this distressing stage of the proceedings, he did his best to preserve the courtesies of debate. Even if, which was denied, the steak was in fact in an uncooked condition, there was still an alternative to stark prohibition. Not having passed the Customs, he pointed out, the steak had not yet been, in a technical sense, imported. Could it not be carried, still in bond, to the restaurant a few yards away, and there subjected to such further process of treatment as would free it from the stigma of carcase-meat and render it fit for importation as foodstuff? This ingenious and eminently reasonable solution was met with a terse rejection. The subject-matter of the dispute, by now (one imagines) rather the worse for wear, was impounded in the Preventive Officer's room.

It was then, and not till then, when he saw his prize disappear into the Limbo of forgotten things, that Mr. Shaw's iron self-control finally snapped. Whether suspense had brought him to a pitch of frenzy in which, like the ancient initiates into the Eleusinian Mysteries, he was ready to devour raw meat in a spirit of religious exaltation, or whether he was resolved at all costs to prevent its being swallowed up in the greedy maw of the Customs and Excise Department, will never be known. The fact is that he waited his opportunity and (in the words of a witness) "nipped into the Preventive Officer's Room," took the meat and was off.

Alas for disappointed hopes! At the Uxbridge Magistrates' Court this gallant fighter was fined £15 for "rescuing" two pounds of steak. The term is a strange one and merits further explanation. Coke (*On Littleton*) defines it as follows:

Rescue (Old French *rescous*): a taking away and setting at liberty, against a lawe, a distresse taken, or a person arrested, by the process or course of lawe.

Though the offence of rescuing goods lawfully seized is a common law misdemeanour, the word has a heroic ring, as befits a heroic exploit. Mr. Shaw will rank henceforth with John Hampden and those other sturdy defenders of the private citizen's rights against the fiscal tyranny of governments. He will not find in this country the like of what he has lost, but we wish him good hunting on his next visit to the Continent, where steaks are steaks. Next time, however, he will be well advised to eat his quarry before landing on these inhospitable shores. A.L.P.

PERSONALIA

APPOINTMENTS

Mr. George Oldfield Brewis, deputy clerk of Nottinghamshire county council since 1947, has been appointed clerk of the Bedfordshire county council. The vacancy was caused by the sudden death of Mr. J. B. Graham, C.B.E., D.L., who had been clerk of the county council and clerk of the peace since 1925. Mr. Brewis is forty-two.

Mr. Charles Edward Davies, deputy clerk of Littlehampton U.D.C., has been appointed clerk to Ventnor U.D.C. Mr. Davies is thirty-eight years of age. He succeeds Mr. J. Wearing who is retiring after thirty years' service.

Mr. F. B. Stevens, LL.B., has been appointed under-sheriff of Bedfordshire. Mr. Stevens, who is in private practice as a solicitor, was formerly deputy clerk to the Bedfordshire county council and was recently appointed clerk to the Bedfordshire Valuation Panel. He was appointed assistant solicitor to the Bedfordshire county council in 1937, and deputy clerk in May, 1946.

TIME TO PAY

I often think that Time to Pay
Just means the prisoner goes away
And promptly then repeats the crime
In order to pay up in time.

J.P.C.

CORRESPONDENCE

[The Editor of the *Justice of the Peace and Local Government Review* invites correspondence on any subject dealt with in its columns, for example, magisterial matters, probation, local government, etc.]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

BREACH OF PROBATION ORDER — FURTHER OFFENCE — FRESH PROBATION ORDER

I was interested in your Notes of the Week for September 22, 1951, especially in the opinion given in the last paragraph but one.

I fail to see why an offender, who has been placed on probation for the original offence, and who towards the end of the period commits a further offence should not be placed on probation for a further period. Surely it is only saying "Evidently the first period was not long enough in your case—and we think that a further period will be beneficial." This does not seem to be against the spirit of the Act or even unjust.

I rather consider that this method must have been intended by the Legislature, for in the original Bill the words "Any sentence" were used. These words later gave way to the words "in any manner in which the court could deal with him."

Again—where the court is dealing both with the new offence and the original offence it can make a fresh probation order on the new offence, and deal with the original offence in some manner which will bring the original probation order to an end. Is, therefore, the court which has summoned the offender under s. 8 (after the further offence has been dealt with by another court) to be deprived of this method of dealing with the offender?

Yours faithfully,
GILBERT H. F. MUMFORD,
Clerk to the Justices.

Justices' Clerk's Office,
14 Upper George Street, Luton.

[We recognize the fact that this is a matter of opinion, and have pleasure in printing this letter in order that two points of view may be put before our readers. At the same time, for the reasons we gave, we still incline to the view we expressed.—*Ed., J.P. and L.G.R.*]

NEW COMMISSIONS

LONDON COUNTY

Charles Blaber, 4, Leyland House, Hale Street, Poplar, E.14.
George Rowland Durston Bradfield, L.D.S., R.C.S., Eng., 200, Kirkdale, Sydenham, S.E.26.
William Isaac Brinson, 34, Portree Street, Poplar, E.14.
George Bruce, 217, Westcombe Hill, Blackheath, S.E.3.
Frederick Cecil Cooksey, 226, Upper Street, Islington, N.1.
Jonathan Lionel Percy Denny, M.C., 12, Exeter House, Putney Heath, S.W.15.
Miss Phyllis Josephine Gerson, M.B.E., Warden, Jewish Girls' Settlement, Beaumont Grove, E.1.
Mrs. Winifred Griffiths, 32, Combemartin Road, S.W.18.
Stanley Charles Camps Harris, 12, Kings Orchard, Eltham, S.E.9.
Henry John Hazard, 28, Dixon Street, Limehouse, E.14.
George Hull, 97, Grove Park, S.E.5.
Albert Edward Hunter, 65, Trinity Court, W.C.1.
Percival Laurence Leith-Breese, 29, Holmwood Road, Cheam, Surrey.
Lady Prudence Katherine Loudon, Heath End House, Spaniard's Road, N.W.3.
George Abercromby Mitchell, 11, Gloucester Gate, N.W.1.
The Hon. Mrs. Louise Mary Moelwyn-Hughes, 63, Marlborough Mansions, N.W.6.
Ambrose Maxwell Nelson Barrett, 46, Queensville Road, S.W.12.
John Thomas Reynolds, 161, Bow Road, E.3.
Lieutenant-Colonel Francis Northey Richardson, T.D., 15, Southwark Street, S.E.1.
Mrs. Margaret Richardson, 18, Pelham Place, S.W.7.
Sir Stanley Ford Touse, C.B.E., 22, Lancaster Gate, W.2.
Joseph Henry Samuels, 83, Geffrye Street, Shoreditch, E.2.
Peter Sebastian, 70, The Woodlands, Beulah Hill, S.E.19.
Albert Gerald Seeley, 111, Petherton Road, N.5.
Victor Ramsden Shaw, Chardstock, Manor Road, St. Albans.
Arthur Massey Skeffington, 43, Sunderland Road, S.E. 23.
John Spencer, 10, Durham Terrace, W.2.

OXFORD COUNTY

Mrs. Margaret Annie Johnson, 99, West Street, Grimsbury, Banbury.
Mrs. Phyllis Louisa Alice Pearson, Wroxton Abbey, Banbury.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption—*Divorce—Custody of child to wife—Application by her and her new husband to adopt child—Child's father's whereabouts unknown—Service of notice.*

X obtained a divorce and was given custody of the child of the marriage. X has now remarried and with her husband wishes to adopt the child. Y, the father of the child, has not been heard of for twelve months and has not maintained the child. Y's address is unknown and notice under reg. 9 of the Adoption of Children Summary Jurisdiction Rules, 1949, cannot be served upon him.

Advice is sought as to whether the court is entitled to dispense with the necessity of this notice. JANG.

Answer.

There is no power to dispense with the service of the notice. Service can be effected within rule 31 of the Adoption of Children (Summary Jurisdiction) Rules, 1949, by sending the notice by registered post to the father at his last known place of abode. If this is done and the father does not communicate with the court there would appear to be good reason for dispensing with his consent.

2.—Children and young persons—*Contribution orders under Children Act, 1948—revocation.*

Can a contribution order made pursuant to s. 23 of the Children Act, 1948, be revoked although the child remains in the care of the local authority?

Section 23 (1) of the 1948 Act applies to children received into the care of a local authority the provisions of ss. 86 to 88 of the Children and Young Persons Act, 1933 (which provide for the making and enforcement of contribution orders), and s. 87 (4) (*b*) applies the provisions of s. 30 of the Criminal Justice Administration Act, 1914, to contribution orders. The last mentioned Act contains powers, *inter alia*, to revoke orders for the periodical payment of money, and the combined effect of these Acts is said to confer power to revoke a contribution order. There appears little doubt that this is the position in cases where the child ceases to remain in the care of the local authority, but on considering the position more closely doubts arise whether a contribution order can be revoked in cases where the child remains in the care of the local authority.

The application ss. 86 to 88 of the 1933 Act to children received into the care of local authorities is, by s. 23 (1) of the 1948 Act, "subject to the provisions of this Part of this Act" and these words qualify the application of ss. 86 to 88.

Subsection (2) of s. 23 of the 1948 Act expressly provides that—"... a contribution order in respect of a child in the care of a local authority under section one of this Act *shall* remain in force so long as he remains in the care of a local authority ..."

It will also be seen that the above subsection applies the provisions of the 1933 Act (England and Wales) and those of the 1937 Act (Scotland) to appeals, but the provisions of the 1937 Act (Scotland) only are applied to the revocation and variation of a contribution order.

A comparison of s. 87 of the 1933 Act (England) and the corresponding s. 91 of the 1937 Act (Scotland) relating to the enforcement of duty of parents to make contributions, reveals that the 1937 Act (Scotland) (s. 91 (6)) only contains specific power of revocation. It may be argued that it was unnecessary to insert a similar subsection in the English Act, as the power to revoke a contribution order is given by s. 87(4) (*b*) applying the provisions of s. 30 of the Criminal Justice Administration Act, 1914. This may undoubtedly be so in cases where the revocation of the contribution order coincides with the child ceasing to remain in the care of the local authority, but any revocation of a contribution order where the child is allowed to remain in the care of the authority is a direct negation of the language of s. 23 (2) of the Children Act, 1948. The intention of the legislature may be that so long as the infant remains in the care of the local authority that authority shall retain its legal right to contributions, and if the financial position of the parent becomes such that he is not able to contribute, machinery is otherwise provided (the Secretary of State has power to remit contributions) for dealing with the situation without extinguishing the legal right of the authority to receive contributions. SSS.

Answer.

Our learned correspondent has stated the arguments on each side of this question with great clearness. In the absence of authority, we feel some doubt as evidently he does, but we incline to the view that there is power to vary, revoke or revive a contribution order upon cause shown, even while the child is still in care. We cannot pretend to adequate knowledge of Scots law, but we note the same apparent contradiction in s. 91 (5) and (6) of the Children and Young Persons (Scotland) Act, 1937, as there is in s. 23 (2) of the Children Act, 1948, read against s. 30 (3) of the Criminal Justice (Administration) Act, 1914. We think that if it had been intended to limit the power to revoke this would have been made plain in the Children Act, 1948.

3.—Children and Young Persons—*Indecent assault by child on young person—Information not laid within six months—Whether child can be committed for trial—Children and Young Persons Act, 1933, s. 14 (3) and Summary Jurisdiction Act, 1879, s. 10.*

A boy, now aged thirteen years (born May 17, 1938), is alleged to have indecently assaulted a girl between the age of thirteen and sixteen years (born December 24, 1936), contrary to s. 52 of the Offences Against the Person Act, 1861. This offence was committed on or about December, 1950, and the boy was then only twelve years old.

The third schedule of the Children and Young Persons Act, 1933, gives power to a juvenile court regarding indictable offences committed by a child for such offence to be dealt with summarily. By s. 14 (3) of the Children and Young Persons Act, 1933, a person shall not be summarily convicted of an offence mentioned in the first schedule of that Act unless the offence was wholly or partly committed within six months before the information was laid.

There is some doubt whether he can be dealt with at all now—sch. 3 says that except on a joint charge a child shall be dealt with summarily for any indictable offence including the offence above mentioned. This would appear to take away the power to commit for trial, and s. 14 imposes the six months' time limit on summary trial. It would appear, therefore, that no trial is now possible at all.

Can you please advise on the above facts and if it is now possible to deal with the case by committal for trial or otherwise. SAIL.

Answer.

As summary proceedings are out of time, the only question is whether the case can be dealt with on indictment. It seems to us that justices are precluded from committing the child for trial by reason of the clear wording of s. 10 of the Act of 1879 as substituted. In our opinion, there is nothing the justices can do.

If it were thought worth while in the case of so young a defendant charged with an offence alleged to have been committed so long ago, the prosecution might apply for leave to prefer an indictment, by virtue of s. 2 (2) of the Administration of Justice (Miscellaneous Provisions) Act, 1933.

4.—Guardianship of Infants—*Access—Parents living apart by agreement and wife having custody of infant—Application by father.*

A husband and wife are voluntarily living apart. After they had separated it was agreed that the wife, with whom the child was living, should have the custody and that the husband should pay a weekly sum for the child's maintenance. There was no mention when the agreement was reached as to access of the child by the husband. The husband now wishes to have access to the child and the wife refuses to consent to this. Can the husband compel his wife to allow him to have access to the child, and if so by what means? SOX.

Answer.

Although s. 5 of the Act of 1886 states that the court may make orders as to custody and access, we have always thought it reasonable to hold that an order as to access only may be made in suitable cases. In the present instance, we think the father may apply for such an order, and upon the hearing of the application the justices can make such order as they think fit. This might well take the form of an order giving the mother the legal custody and the father the reasonable access.

5.—Magistrates—*Practice and procedure—Criminal case—Defence calling witnesses after unsuccessful submission of "no case."*

If at the close of the case for the prosecution the defence unsuccessfully submit that there is no case to answer are they thereby precluded from calling their own witnesses? JEV.

Answer.

In our opinion it is clear that in a criminal case the defence are entitled to call witnesses after an unsuccessful submission of no case. In civil proceedings the matter is not so free from doubt (*see* an article at 115 J.P.N. 178 and other articles therein referred to).

6.—National Assistance Act, 1948—*Determination of Needs Regulations—Aggregation of resources—Discretion of board in special circumstances.*

W applies to the National Assistance Board for assistance. He is refused because although he has no resources whatever, the resources of his wife, with whom he lives, are far in excess of the prescribed

limits. W alleges that his wife refuses to use any part of her resources to maintain him, and appeals to the Assistance Tribunal.

Before the Tribunal, W argues in the alternative :

(1) That the effect of s. 11 (1) of the National Assistance Act, 1948, is to enable the Assistance Board to ignore the effect of aggregation of resources, not only in cases under ss. 9 and 10 of the same Act, but also in any urgent case.

(2) That the wife's refusal to maintain the appellant is a special circumstance within reg. 3 of the Determination of Needs Regulations, and that the board may accordingly proceed to calculate W's needs, under reg. 2 of the same regulations as if his and his wife's requirments and resources were not aggregated.

(3) W pointed out that if he was not eligible for assistance under the previous provisions quoted by him, as stated above, his only course appeared to be to leave his wife, and argued that these circumstances constituted an exceptional need for assistance under reg. 6 of the Determination of Needs Regulations.

The clerk of the Assistance Tribunal notified the decision of the Tribunal to W in writing in the following terms :

" I have to inform you that your appeal against the decision of the board's officer . . . has been considered by the Tribunal, and that the officer's decision has been confirmed."

The officer's decision previously set out in writing was as follows :

" I have to inform you that in your present circumstances, you cannot be regarded as in need of assistance."

W was, prior to the hearing before the Tribunal, furnished with a copy of a form supplied to the Tribunal by the board giving particulars of the case. One section is headed " Decision appealed against," and the decision is set out " Appellant is not in need of assistance." Then follow the reasons for appeal stated by W which in turn are followed by observations by the officer of the board. The observations are, " Appellant's wife owns two houses in —, free from mortgage, valued over £1,000. W states his wife refuses to maintain him, while she in turn states that her income is shared with her husband, and that she pays the rent of the house. Mrs. W is reluctant to raise a mortgage on her property." Is W in a position to apply for an order of *certiorari* ? FECH.

Answer.

In our view, there is nothing in this case which would enable W to apply for an order of *certiorari* with prospects of success. There is nothing to indicate that the Tribunal have behaved erroneously or improperly or given any grounds for review.

We observe that the officer of the Board of National Assistance notes (*inter alia*) that W's wife " in turn states that her income is shared with her husband and that she pays the rent of the house."

As regards W's arguments :

(1) We agree, but point out that it lies within the discretion of the Board whether this course shall be taken. If they decide against it then the exercise of their discretion cannot be questioned.

(2) It appears that there was evidence before the Tribunal upon which it could find the contrary to the wife's refusal as alleged by W and that they did in fact so find. The power of adjustment given by reg. 6 provides discretionary power in respect of grants for exceptional needs and the exercise of this discretion cannot, in our view, be questioned in the courts.

7.—Road Traffic Acts—*Definition of road—Road and quay used as an official car park—Fee charged—Open to public at large—Leaving car with engine running.*

A defendant has been charged before my justices with having quitted his car without having stopped the engine whilst on a certain road, contrary to reg. 82 (3) of the Motor Vehicles (Construction and Use) Regulations, 1947. At the hearing, which has been adjourned, the defendant contended that his car was on a car park and that he had paid a fee and that the prosecution therefore failed as he was not on a road as defined by the Road Traffic Act.

The road in question is a road and a quay, and is used as an official car park—a parking fee being charged—and is open to the public at large. There is no evidence yet to hand that the road has by any process been acquired by either the borough council or county council as a car park although a fee is charged for parking. Even so, if it has been acquired, does it cease to be a road for the matter now in question ?

The only case which would appear to be to the point, and which I do not have, is *O'Brien* v. *Trafalgar Insurance Co., Ltd.* (1945) 109 J.P. 107, where it was held that a factory being accessible to those with a special pass was not within the definition of a road. Here of course the facts seem to be able to be distinguished, mainly that although a fee is chargeable to a person who leaves a vehicle there, yet on the other hand the public do freely walk across the quay at their will and pleasure and it may therefore well be a road as defined in the Act.

Your comments on this matter will be much appreciated.

JARK.

Answer.

Since a charge cannot be made for parking in a street (we have dealt with this point in the past), it should *prima facie* be taken that the quay is not a street. But this, which perhaps is what the defendant has in mind, does not necessarily mean that it is not a road.

We think that on the facts the justices would be entitled to hold that the place in question is a road to which the public has access, in accordance with the definition in s. 121 of the 1930 Act.

The case of *Bugge* v. *Taylor* (1941) 104 J.P. 467, which was one under the Road Transport Lighting Act, 1927, seems to be in point.

8.—Road Traffic Acts—*Endorsement of driving licence as a " disability " within s.* 12 (2), *Criminal Justice Act*, 1948.

I have read your various Practical Points and your article " Endorsements and Disqualifications under the Road Traffic Acts " at 114 J.P.N. 397, and note you are of opinion that the endorsement of a driving licence is not a disability to which s. 12 (2) of the Criminal Justice Act, 1948, applies.

Adopting this view, in convictions for careless driving and speeding followed by an order under ss. 3 or 7 of the Criminal Justice Act, 1948, the defendant's licence must, apart from " special reasons," be endorsed although in cases of, in general, a much more serious nature such as non-insurance and " drunk in charge " which the court considers in exceptional circumstances could properly be met by such an order there expressly cannot be disqualification and, if it is accepted that an endorsement is not a disability, there is merely a discretion under s. 6 of the Road Traffic Act, 1930, whether or not to endorse, which seems incongruous.

I am fully aware that in matters of this nature the court must be particularly circumspect in invoking the provisions of ss. 3 or 7 of the Criminal Justice Act but it is my experience that occasions do arise in careless driving and speeding cases when it is felt proper to exercise the utmost leniency following conviction and the court may be particularly anxious not to endorse—cases can be envisaged where the mere endorsement of a licence could be so serious a handicap to a defendant as to amount to a disability, for example, a defendant engaged in a motor driving occupation where a " clean driving licence " is insisted on.

It seems unfortunate that the repeal of the Probation of Offenders Act and its modified "re-enactment" should fetter the court in circumstances such as those outlined above and I feel, in the absence of any decision on the point, that it might not be unreasonable to take the view, in favour of a defendant that the word "disability" as used in s. 12 of the Criminal Justice Act, 1948, is sufficiently general to include endorsements of licences taking into account also the whole wording of the section, its apparent intention and its effect with regard to much heavier statutory "impositions."

The Home Office circular issued to clerks to justices on the coming into force of, *inter alia*, s. 12 made no mention of endorsement of licences—the footnote to this section in Hughes and Morrison's *Criminal Justice Act*, 1948, reads: "The section absolves the offender from legal consequences which otherwise would flow from a conviction."

I should be grateful if you would tell me whether you feel strongly opposed to the view I have expressed and if you would let me have any further observations you may feel able to make. JOSX.

Answer.

We appreciate the argument put forward by our correspondent, but we adhere to the view expressed in the article referred to. If our correspondent is correct his view must involve accepting, we submit, that the endorsement of a driving licence is in every case a "disability," as we do not think it would be argued that it is a casual matter to be decided differently in different cases according to the circumstances of the driver concerned and according, moreover, to the varying views of different courts on similar sets of circumstances.

In the *Concise Oxford Dictionary* "disability" is defined as "a thing that prevents one's doing something, especially a legal disqualification." In our view, if a motorist has his driving licence endorsed, he is not, in general, disabled or prevented from doing anything, and there is, therefore, no disability. The fact that a particular employer chooses to say that he will not employ anyone who has an endorsement on his driving licence does not, in our view, turn an endorsement into a "disability" in the general sense which we feel that word must bear in s. 12 (2).

9. Road Traffic Acts—*Mechanically propelled vehicle—Combine harvester in process of adaptation for self-propulsion as a "disabled mechanically propelled vehicle."*

A motor patrol constable was on duty when he saw a man driving a Fordson lorry on the highway. The lorry was drawing a two-wheeled combine harvester, attached to the rear of the lorry by means of a draw bar. The constable stopped the driver and examined the vehicle. He saw that the combine had been fitted with a tractor engine with a view to adapting same into a self-propelled vehicle. The adaptation had not been completed and there was no drive to the road wheels of the combine. The combine was new and had just been towed from the dealer's premises.

When the certificate of insurance was examined, it read: "Limitations as to use—The policy does not cover (2) use whilst drawing a trailer except the towing of any one disabled mechanically propelled vehicle."

The road fund licence was examined and it was found the lorry was not licensed to draw a trailer.

The driver was reported for using the motor lorry on a road when there was not in force in relation to the user of the said vehicle by him such a policy of insurance or such a security in respect of third party risk as complied with the requirements of Part 2 of the Road Traffic Act, 1930, contrary to s. 35 of the Road Traffic Act, 1930.

The owner was reported (1) for causing the use as aforesaid and (2) for using the lorry on a road for a purpose which brought it within a class or description of vehicle to which a higher rate of duty was chargeable under the said Act, such higher rate not having been paid before the vehicle was so used contrary to s. 13 of the Vehicles (Excise) Act, 1949.

It was advanced by the prosecution, which I conducted, that the combine harvester was a trailer as, never being capable of being mechanically propelled, it could not be a disabled mechanically propelled vehicle.

A solicitor appeared for the defence and argued it was not a trailer but was a disabled mechanically propelled vehicle.

After a retirement, the justices dismissed all three charges, the chairman stating, "The facts in the case are not disputed but the bench are not satisfied that the prosecution has proved that an offence had been committed." It was proved the combine had never been a mechanically propelled vehicle.

I should be grateful of your opinion as to whether or not the magistrates were correct in regarding this as a disabled mechanically propelled vehicle and not a trailer. JIB.

Answer.

It is difficult to be certain if this is purely a question of fact, or if it could be said to be a point of law whether a vehicle which has never been capable of being driven under its own power can properly be described as a mechanically propelled vehicle. Probably it is a question of law.

Our view is that before a vehicle can be said to be a "disabled mechanically propelled vehicle" it must have been capable of being mechanically propelled. This harvester never was, and we think, therefore, it was only a trailer, and *not* a trailer which was also a disabled mechanically propelled vehicle.

10. Tort—*Negligence—Damage to accommodation bridge—Whether third party can sue for consequential loss.*

Blackacre is situate on an island site between the Yellow river and the Loamshire canal, and the only access thereto is by means of an accommodation swing bridge erected and maintained by the canal authority under a statutory duty "for the use of the owners and occupiers" of the lands adjoining the canal. X (who is not such an owner, nor we think, an occupier) has a valuable contract with the owner of Blackacre for the working and removal of gravel therefrom, when a vessel belonging to Y, proceeding along the canal, fouls and damages the swing bridge, rendering it unfit for use and thereby temporarily depriving X of all access to Blackacre. The canal authority are doing all they can to restore the bridge, but meanwhile X is suffering a heavy loss of profit under his contract. Will you please advise whether X can recover damages against the canal authority and/or Y, assuming the damage to the bridge to have been caused by the negligence of their respective servants. You will probably agree with us that no action lies against either in the absence of negligence. ALCO.

Answer.

The special Act was, we suppose, promoted by the canal company and, as a condition of converting Blackacre into an island, they may have had to accept an absolute obligation to maintain the bridge. This should be looked into. Subject to what the Act says, we agree with your last sentence. If proceedings are taken by X against Y, and negligence is proved, the proceedings will not in our opinion fail because X is not an owner or occupier. The contract is within the intendment of the use of Blackacre by the owner and occupier; use of the bridge by their invitees is within the purposes for which the bridge exists, and damage by loss of profit is not too remote to be recovered. Generally, *see Hay (or Bourhill)* v. *Young* [1942] 2 All E.R. 396, and cases there considered, such as *Castle* v. *St.Augustine's Links* (1922) 38 T.L.R. 615.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

METROPOLITAN BOROUGH OF STEPNEY

Assistant Solicitor, Town Clerk's Department

APPLICATIONS are invited for the above appointment which is graded in A.P.T. X of the National Scheme of Conditions of Service (Salary £870—£1,000 per annum, plus London Weighting Allowance).

Applicants must be admitted solicitors and have had at least eight years' practising experience, including advocacy; Local Government administration; High Court litigation; and conveyancing.

The appointment will be subject to the above National Scheme as adopted by the Council and applied to its staff; to the provisions of the Stepney Borough Council (Superannuation) Acts, 1905—31; and to the Council's byelaws.

Applications on the form provided, which is obtainable from the undersigned, must be returned by not later than 12 noon on Monday, November 12, 1951.

Canvassing, either directly or indirectly, will disqualify.

J. E. ARNOLD JAMES,
Town Clerk.

London Fruit Exchange,
Duval Street, E.1.

October 24, 1954.

WEST RIDING OF YORKSHIRE COMBINED AREA PROBATION COMMITTEE

Appointment of Male Probation Officer
Appointment of Female Probation Officer

APPLICATIONS are invited for the above whole-time appointments.

The male officer would be centred at Halifax and assigned to the Halifax County Borough and the Petty Sessional Divisions of Morley West and Todmorden and the female officer would be centred at Barnsley and assigned to the Barnsley County Borough and the Petty Sessional Division of Staincross.

Applicants must be not less than twenty-three nor more than forty years of age except in the case of whole-time serving officers and persons who have satisfactorily completed a course of training approved by the Secretary of State.

The appointment will be subject to the Probation Rules, 1949, as amended by the Probation Rules, 1950, and to the Local Government Superannuation Act, 1937, as amended by the West Riding County Council (General Powers) Act, 1948.

The successful candidate will be required to pass a medical examination.

Application forms may be obtained from the Principal Probation Officer, West Riding Court House, Wakefield.

Applications, together with two recent testimonials, should be enclosed in a sealed envelope marked "Appointment of Probation Officer," and must reach the undersigned not later than November 17, 1951.

BERNARD KENYON,
Clerk to the Combined Area Probation Committee.

Office of the Clerk of the Peace,
County Hall,
Wakefield.
October, 1951.

COUNTY OF BEDFORD

Appointment of Female Probation Officer

APPLICATIONS are invited for the appointment of a Female Probation Officer to be stationed at Dunstable. Applicants must be between the ages of 23 and 40 unless already serving as full-time Probation Officers. The appointment will be subject to the Probation Rules, and the salary and allowances payable will be in accordance with such rules subject to superannuation deduction. Applications, stating age, qualifications and experience, accompanied by not more than two recent testimonials, must reach the undersigned not later than November 24, 1951.

D. H. LINES,
Deputy Clerk of the Peace.

Shire Hall,
Bedford.

EAST SUSSEX COUNTY COUNCIL

Committee and General Clerk

APPLICATIONS are invited for this appointment on Grade V (£570—£620) of the National Joint Council's scales of salaries. Applicants should be experienced in the preparation of agendas, minutes and reports of Committees and have experience in the general work of a local authority.

The appointment is on a permanent basis; it is subject to such conditions of service as may from time to time be approved on behalf of the County Council, and a candidate to be successful must pass a medical examination.

Applications, stating age, qualifications, present appointment and experience, and accompanied by the names of two persons to whom reference may be made must be sent to me by November 10, 1951.

Applicants should disclose any relationship to a member or senior officer of the Council. Canvassing will disqualify.

H. S. MARTIN,
Clerk of the County Council.

County Hall,
Lewes.
October 20, 1951.

COUNTY OF KENT

Appointment of Probation Officers

THE KENT Combined Probation Committee invites applications for the appointment of a whole-time woman Probation Officer and whole-time male Probation Officer to serve in the Kent Combined Probation Area.

The appointments will be subject to the Probation Rules, 1950, and the salaries will be in accordance with the scale provided in the Rules. The appointments are superannuable.

Applicants must be qualified to deal with probation cases, matrimonial differences and other social work of the Courts.

The selected candidates will be required to pass a medical examination.

Applications, stating age, experience and educational qualifications, together with copies of not more than three recent testimonials, should be sent to the undersigned within fourteen days of the appearance of this advertisement.

W. L. PLATTS,
Clerk of the Peace.

County Hall,
Maidstone.

BEDFORDSHIRE COUNTY COUNCIL

Assistant Solicitor

APPLICATIONS are invited for the above appointment at a salary within the range £600—£760 according to experience. The appointment will be subject to the National Scheme of Conditions of Service and the Local Government Superannuation Act, 1937. Previous experience in the office of a local authority desirable but not essential. Applications, endorsed "Assistant Solicitor," with names of two referees, must reach the Deputy Clerk of the Council, Shire Hall, Bedford by November 5, 1951.

COUNTY BOROUGH OF DARLINGTON

Appointment of Clerk to the Justices

APPLICATIONS are invited from Solicitors, qualified under the Justice of the Peace Act, 1949, for the above appointment. The salary will be £1,250 per annum rising by annual increments of £50 to £1,400 and is superannuable. The appointment is a full time one and is subject to medical examination. Offices, staff and equipment will be provided by the justices.

Applications, giving the names of two referees, should be sent to me by November 3, 1951. Canvassing will be a disqualification.

J. FENWICK MOORE,
Clerk to the Justices.

COUNTY OF DURHAM

Petty Sessional Division of Darlington County

APPLICATIONS are invited from Solicitors for appointment as Clerk to the County Justices for the above division.

The appointment will be a part time one. Remuneration will be £350 per annum Personal Salary, and there will be an allowance of £44 per annum paid towards office expenses, printing and stationery. An additional sum of £340 may be paid in respect of clerical assistance.

Applications, giving the names of two referees, should reach the undersigned not later than November 3, 1951.

J. FENWICK MOORE,
Clerk to the Justices,

10 Houndgate,
Darlington.

LINCOLNSHIRE COMBINED PROBATION AREA

Appointment of Male Probation Officer

APPLICATIONS are invited for the appointment of a full-time male probation officer for the borough of Grimsby.

The appointment and salary will be subject to the provisions of the Probation Rules.

The selected candidate will be required to pass a medical examination and will act under the supervision and direction of the senior Probation Officer at Grimsby

Applications should reach me not later than November 12, 1951.

H. COPLAND,
Secretary.

County Offices,
Lincoln.

COUNTY OF DEVON

Appointment of Prosecuting Solicitor

APPLICATIONS are invited from Solicitors for the permanent appointment of Prosecuting Solicitor, at a salary of £1,200, rising by annual increments of £50 to a maximum of £1,400 per annum: the commencing salary to be fixed according to the successful candidate's experience.

The person appointed will principally be required to undertake prosecutions on behalf of the County Police, but may also be required to undertake prosecutions on behalf of the County Council, and kindred work. In relation to cases which are dealt with by the Devon Quarter Sessions, the person appointed will act independently of the Clerk of the County Council.

Applicants must have had considerable experience in advocacy and criminal law.

The appointment is superannuable and the successful candidate will be required to pass a medical examination.

Canvassing will be a disqualification.

Applications, stating age, qualifications and experience, and giving the names of three persons to whom reference may be made, should reach the undersigned not later than November 17, 1951.

H. A. DAVIS,
Clerk of the County Council.

The Castle, Exeter.

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